

THE CODE OF CRIMINAL PROCEDURE (EXCERPT)

Act 175 of 1927

CHAPTER IX

JUDGMENT AND SENTENCE

769.1 Authority and power of court; crimes for which juvenile to be sentenced as adult; fingerprints as condition to sentencing; hearing at juvenile's sentencing; determination; criteria; waiver; violation of MCL 333.7403; statement on record; transcript; reimbursement provision in order of commitment; disposition of collections; order to intercept tax refunds and initiate offset proceedings; notice; order directed to person responsible for juvenile's support; hearing; copy of order; retention of jurisdiction over juvenile; annual review; examination of juvenile's annual report; forwarding report.

Sec. 1. (1) A judge of a court having jurisdiction may pronounce judgment against and pass sentence upon a person convicted of an offense in that court. The sentence shall not exceed the sentence prescribed by law. The court shall sentence a juvenile convicted of any of the following crimes in the same manner as an adult:

(a) Arson of a dwelling in violation of section 72 of the Michigan penal code, 1931 PA 328, MCL 750.72.

(b) Assault with intent to commit murder in violation of section 83 of the Michigan penal code, 1931 PA 328, MCL 750.83.

(c) Assault with intent to maim in violation of section 86 of the Michigan penal code, 1931 PA 328, MCL 750.86.

(d) Attempted murder in violation of section 91 of the Michigan penal code, 1931 PA 328, MCL 750.91.

(e) Conspiracy to commit murder in violation of section 157a of the Michigan penal code, 1931 PA 328, MCL 750.157a.

(f) Solicitation to commit murder in violation of section 157b of the Michigan penal code, 1931 PA 328, MCL 750.157b.

(g) First degree murder in violation of section 316 of the Michigan penal code, 1931 PA 328, MCL 750.316.

(h) Second degree murder in violation of section 317 of the Michigan penal code, 1931 PA 328, MCL 750.317.

(i) Kidnapping in violation of section 349 of the Michigan penal code, 1931 PA 328, MCL 750.349.

(j) First degree criminal sexual conduct in violation of section 520b of the Michigan penal code, 1931 PA 328, MCL 750.520b.

(k) Armed robbery in violation of section 529 of the Michigan penal code, 1931 PA 328, MCL 750.529.

(l) Carjacking in violation of section 529a of the Michigan penal code, 1931 PA 328, MCL 750.529a.

(2) A person convicted of a felony or of a misdemeanor punishable by imprisonment for more than 92 days shall not be sentenced until the court has examined the court file and has determined that the person's fingerprints have been taken.

(3) Unless a juvenile is required to be sentenced in the same manner as an adult under subsection (1), a judge of a court having jurisdiction over a juvenile shall conduct a hearing at the juvenile's sentencing to determine if the best interests of the public would be served by placing the juvenile on probation and committing the juvenile to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309, or by imposing any other sentence provided by law for an adult offender. Except as provided in subsection (5), the court shall sentence the juvenile in the same manner as an adult unless the court determines by a preponderance of the evidence that the interests of the public would be best served by placing the juvenile on probation and committing the juvenile to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309. The rules of evidence do not apply to a hearing under this subsection. In making the determination required under this subsection, the judge shall consider all of the following, giving greater weight to the seriousness of the alleged offense and the juvenile's prior record of delinquency:

(a) The seriousness of the alleged offense in terms of community protection, including, but not limited to, the existence of any aggravating factors recognized by the sentencing guidelines, the use of a firearm or other dangerous weapon, and the impact on any victim.

(b) The juvenile's culpability in committing the alleged offense, including, but not limited to, the level of the juvenile's participation in planning and carrying out the offense and the existence of any aggravating or mitigating factors recognized by the sentencing guidelines.

(c) The juvenile's prior record of delinquency including, but not limited to, any record of detention, any police record, any school record, or any other evidence indicating prior delinquent behavior.

(d) The juvenile's programming history, including, but not limited to, the juvenile's past willingness to participate meaningfully in available programming.

(e) The adequacy of the punishment or programming available in the juvenile justice system.

(f) The dispositional options available for the juvenile.

(4) With the consent of the prosecutor and the defendant, the court may waive the hearing required under subsection (3). If the court waives the hearing required under subsection (3), the court may place the juvenile on probation and commit the juvenile to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309, but shall not impose any other sentence provided by law for an adult offender.

(5) If a juvenile is convicted of a violation or conspiracy to commit a violation of section 7403(2)(a)(i) of the public health code, 1978 PA 368, MCL 333.7403, the court shall determine whether the best interests of the public would be served by imposing the sentence provided by law for an adult offender, by placing the individual on probation and committing the individual to an institution or agency under subsection (3), or by imposing a sentence of imprisonment for any term of years but not less than 25 years. If the court determines by clear and convincing evidence that the best interests of the public would be served by imposing a sentence of imprisonment for any term of years but not less than 25 years, the court may impose that sentence. In making its determination, the court shall use the criteria specified in subsection (3).

(6) The court shall state on the record the court's findings of fact and conclusions of law for the probation and commitment decision or sentencing decision made under subsection (3). If a juvenile is committed under subsection (3) to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309, a transcript of the court's findings shall be sent to the family independence agency or county juvenile agency, as applicable.

(7) If a juvenile is committed under subsection (3) or (4) to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309, the written order of commitment shall contain a provision for the reimbursement to the court by the juvenile or those responsible for the juvenile's support, or both, for the cost of care or service. The amount of reimbursement ordered shall be reasonable, taking into account both the income and resources of the juvenile and those responsible for the juvenile's support. The amount may be based upon the guidelines and model schedule prepared under section 18(6) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18. The reimbursement provision applies during the entire period the juvenile remains in care outside the juvenile's own home and under court supervision. The court shall provide for the collection of all amounts ordered to be reimbursed, and the money collected shall be accounted for and reported to the county board of commissioners. Collections to cover delinquent accounts or to pay the balance due on reimbursement orders may be made after a juvenile is released or discharged from care outside the juvenile's own home and under court supervision. Twenty-five percent of all amounts collected pursuant to an order entered under this subsection shall be credited to the appropriate fund of the county to offset the administrative cost of collections. The balance of all amounts collected pursuant to an order entered under this subsection shall be divided in the same ratio in which the county, state, and federal government participate in the cost of care outside the juvenile's own home and under county, state, or court supervision. The court may also collect benefits paid by the government of the United States for the cost of care of the juvenile. Money collected for juveniles placed with or committed to the family independence agency or a county juvenile agency shall be accounted for and reported on an individual basis. In cases of delinquent accounts, the court may also enter an order to intercept state tax refunds or the federal income tax refund of a child, parent, guardian, or custodian and initiate the necessary offset proceedings in order to recover the cost of care or service. The court shall send to the person who is the subject of the intercept order advance written notice of the proposed offset. The notice shall include notice of the opportunity to contest the offset on the grounds that the intercept is not proper because of a mistake of fact concerning the amount of the delinquency or the identity of the person subject to the order. The court shall provide for the prompt reimbursement of an amount withheld in error or an amount found to exceed the delinquent amount.

(8) If the court appoints an attorney to represent a juvenile, an order entered under this section may require the juvenile or person responsible for the juvenile's support, or both, to reimburse the court for attorney fees.

(9) An order directed to a person responsible for the juvenile's support under this section is not binding on the person unless an opportunity for a hearing has been given and until a copy of the order is served on the person, personally or by first-class mail to the person's last known address.

(10) If a juvenile is placed on probation and committed under subsection (3) or (4) to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309, the court shall retain jurisdiction over the juvenile while the juvenile is on probation and committed to that institution or agency.

(11) If the court has retained jurisdiction over a juvenile under subsection (10), the court shall conduct an annual review of the services being provided to the juvenile, the juvenile's placement, and the juvenile's progress in that placement. In conducting this review, the court shall examine the juvenile's annual report prepared under section 3 of the juvenile facilities act, 1988 PA 73, MCL 803.223. The court may order changes in the juvenile's placement or treatment plan including, but not limited to, committing the juvenile to the jurisdiction of the department of corrections, based on the review.

(12) If an individual who is under the court's jurisdiction under section 4 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.4, is convicted of a violation or conspiracy to commit a violation of section 7403(2)(a)(i) of the public health code, 1978 PA 368, MCL 333.7403, the court shall determine whether the best interests of the public would be served by imposing the sentence provided by law for an adult offender or by imposing a sentence of imprisonment for any term of years but not less than 25 years. If the court determines by clear and convincing evidence that the best interests of the public would be served by imposing a sentence of imprisonment for any term of years but not less than 25 years, the court may impose that sentence. In making its determination, the court shall use the criteria specified in subsection (3) to the extent they apply.

(13) If the defendant is sentenced for an offense other than a listed offense as defined in section 2(d)(i) to (ix) and (xi) to (xiii) of the sex offenders registration act, 1994 PA 295, MCL 28.722, the court shall determine if the offense is a violation of a law of this state or a local ordinance of a municipality of this state that by its nature constitutes a sexual offense against an individual who is less than 18 years of age. If so, the conviction is for a listed offense as defined in section 2(d)(x) of the sex offenders registration act, 1994 PA 295, MCL 28.722, and the court shall include the basis for that determination on the record and include the determination in the judgment of sentence.

(14) When sentencing a person convicted of a misdemeanor involving the illegal delivery, possession, or use of alcohol or a controlled substance or a felony, the court shall examine the presentence investigation report and determine if the person being sentenced is licensed or registered under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838. The court shall also examine the court file and determine if a report of the conviction upon which the person is being sentenced has been forwarded to the department of consumer and industry services as provided in section 16a. If the report has not been forwarded to the department of consumer and industry services, the court shall order the clerk of the court to immediately prepare and forward the report as provided in section 16a.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17329;—CL 1948, 769.1;—Am. 1980, Act 506, Imd. Eff. Jan. 22, 1981;—Am. 1986, Act 232, Eff. June 1, 1987;—Am. 1988, Act 78, Eff. Oct. 1, 1988;—Am. 1989, Act 113, Imd. Eff. June 23, 1989;—Am. 1993, Act 85, Eff. Apr. 1, 1994;—Am. 1996, Act 247, Eff. Jan. 1, 1997;—Am. 1996, Act 248, Eff. Jan. 1, 1997;—Am. 1998, Act 520, Imd. Eff. Jan. 12, 1999;—Am. 1999, Act 87, Eff. Sept. 1, 1999.

Compiler's note: Section 3 of Act 78 of 1988 provides: "This amendatory act shall take effect June 1, 1988." This section was amended by Act 181 of 1988 to read as follows: "This amendatory act shall take effect October 1, 1988."

Former law: See section 3 of Act 162 of 1850, being CL 1857, § 6113; CL 1871, § 7997; How., § 9613; CL 1897, § 11983; CL 1915, § 15856; and Act 166 of 1851.

769.1a Order of restitution.

Sec. 1a. (1) As used in this section:

(a) "Crime victim services commission" means that term as described in section 2 of 1976 PA 223, MCL 18.352.

(b) "Victim" means an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a felony, misdemeanor, or ordinance violation. For purposes of subsections (2), (3), (6), (8), (9), and (13), victim includes a sole proprietorship, partnership, corporation, association, governmental entity, or any other legal entity that suffers direct physical or financial harm as a result of a felony, misdemeanor, or ordinance violation.

(2) Except as provided in subsection (8), when sentencing a defendant convicted of a felony, misdemeanor, or ordinance violation, the court shall order, in addition to or in lieu of any other penalty authorized by law or in addition to any other penalty required by law, that the defendant make full restitution to any victim of the defendant's course of conduct that gives rise to the conviction or to the victim's estate.

(3) If a felony, misdemeanor, or ordinance violation results in damage to or loss or destruction of property of a victim of the felony, misdemeanor, or ordinance violation or results in the seizure or impoundment of property of a victim of the felony, misdemeanor, or ordinance violation, the order of restitution may require that the defendant do 1 or more of the following, as applicable:

(a) Return the property to the owner of the property or to a person designated by the owner.

(b) If return of the property under subdivision (a) is impossible, impractical, or inadequate, pay an amount

equal to the greater of subparagraph (i) or (ii), less the value, determined as of the date the property is returned, of that property or any part of the property that is returned:

(i) The fair market value of the property on the date of the damage, loss, or destruction. However, if the fair market value of the property cannot be determined or is impractical to ascertain, then the replacement value of the property shall be utilized in lieu of the fair market value.

(ii) The fair market value of the property on the date of sentencing. However, if the fair market value of the property cannot be determined or is impractical to ascertain, then the replacement value of the property shall be utilized in lieu of the fair market value.

(c) Pay the cost of the seizure or impoundment, or both.

(4) If a felony, misdemeanor, or ordinance violation results in physical or psychological injury to a victim, the order of restitution may require that the defendant do 1 or more of the following, as applicable:

(a) Pay an amount equal to the cost of actual medical and related professional services and devices relating to physical and psychological care.

(b) Pay an amount equal to the cost of actual physical and occupational therapy and rehabilitation.

(c) Reimburse the victim or the victim's estate for after-tax income loss suffered by the victim as a result of the felony, misdemeanor, or ordinance violation.

(d) Pay an amount equal to the cost of psychological and medical treatment for members of the victim's family that has been incurred as a result of the felony, misdemeanor, or ordinance violation.

(e) Pay an amount equal to the cost of actual homemaking and child care expenses incurred as a result of the felony, misdemeanor, or ordinance violation.

(5) If a felony, misdemeanor, or ordinance violation resulting in bodily injury also results in the death of a victim, the order of restitution may require that the defendant pay an amount equal to the cost of actual funeral and related services.

(6) If the victim or the victim's estate consents, the order of restitution may require that the defendant make restitution in services in lieu of money.

(7) If the victim is deceased, the court shall order that the restitution be made to the victim's estate.

(8) The court shall order restitution to the crime victim services commission or to any individuals, partnerships, corporations, associations, governmental entities, or other legal entities that have compensated the victim or the victim's estate for a loss incurred by the victim to the extent of the compensation paid for that loss. The court shall also order restitution for the costs of services provided to persons or entities that have provided services to the victim as a result of the felony, misdemeanor, or ordinance violation. Services that are subject to restitution under this subsection include, but are not limited to, shelter, food, clothing, and transportation. However, an order of restitution shall require that all restitution to a victim or a victim's estate under the order be made before any restitution to any other person or entity under that order is made. The court shall not order restitution to be paid to a victim or victim's estate if the victim or victim's estate has received or is to receive compensation for that loss, and the court shall state on the record with specificity the reasons for its action. If an entity entitled to restitution under this subsection for compensating the victim or the victim's estate cannot or refuses to be reimbursed for that compensation, the restitution paid for that entity shall be deposited by the state treasurer in the crime victim's rights fund created under section 4 of 1989 PA 196, MCL 780.904, or its successor fund.

(9) Any amount paid to a victim or a victim's estate under an order of restitution shall be set off against any amount later recovered as compensatory damages by the victim or the victim's estate in any federal or state civil proceeding and shall reduce the amount payable to a victim or a victim's estate by an award from the crime victim services commission made after an order of restitution under this section.

(10) If not otherwise provided by the court under this subsection, restitution shall be made immediately. However, the court may require that the defendant make restitution under this section within a specified period or in specified installments.

(11) If the defendant is placed on probation or paroled or the court imposes a conditional sentence under section 3 of this chapter, any restitution ordered under this section shall be a condition of that probation, parole, or sentence. The court may revoke probation or impose imprisonment under the conditional sentence and the parole board may revoke parole if the defendant fails to comply with the order and if the defendant has not made a good faith effort to comply with the order. In determining whether to revoke probation or parole or impose imprisonment, the court or parole board shall consider the defendant's employment status, earning ability, and financial resources, the willfulness of the defendant's failure to pay, and any other special circumstances that may have a bearing on the defendant's ability to pay.

(12) A defendant who is required to pay restitution and who is not in willful default of the payment of the restitution may at any time petition the sentencing judge or his or her successor to modify the method of payment. If the court determines that payment under the order will impose a manifest hardship on the

defendant or his or her immediate family, the court may modify the method of payment.

(13) An order of restitution entered under this section remains effective until it is satisfied in full. An order of restitution is a judgment and lien against all property of the defendant for the amount specified in the order of restitution. The lien may be recorded as provided by law. An order of restitution may be enforced by the prosecuting attorney, a victim, a victim's estate, or any other person or entity named in the order to receive the restitution in the same manner as a judgment in a civil action or a lien.

(14) Notwithstanding any other provision of this section, a defendant shall not be imprisoned, jailed, or incarcerated for a violation of probation or parole or otherwise for failure to pay restitution as ordered under this section unless the court or parole board determines that the defendant has the resources to pay the ordered restitution and has not made a good faith effort to do so.

(15) In each case in which payment of restitution is ordered as a condition of probation, the probation officer assigned to the case shall review the case not less than twice yearly to ensure that restitution is being paid as ordered. The final review shall be conducted not less than 60 days before the probationary period expires. If the probation officer determines that restitution is not being paid as ordered, the probation officer shall file a written report of the violation with the court on a form prescribed by the state court administrative office. The report shall include a statement of the amount of the arrearage and any reasons for the arrearage known by the probation officer. The probation officer shall immediately provide a copy of the report to the prosecuting attorney. If a motion is filed or other proceedings are initiated to enforce payment of restitution and the court determines that restitution is not being paid or has not been paid as ordered by the court, the court shall promptly take action necessary to compel compliance.

(16) If a defendant who is ordered to pay restitution under this section is remanded to the jurisdiction of the department of corrections, the court shall provide a copy of the order of restitution to the department of corrections when the defendant is ordered remanded to the department's jurisdiction.

History: Add. 1985, Act 89, Imd. Eff. July 10, 1985;—Am. 1993, Act 343, Eff. May 1, 1994;—Am. 1996, Act 122, Eff. May 1, 1996;—Am. 1996, Act 560, Eff. June 1, 1997;—Am. 1998, Act 231, Imd. Eff. July 3, 1998;—Am. 2009, Act 27, Eff. July 1, 2009.

Compiler's note: For transfer of powers and duties of Michigan parole and commutation board to Michigan parole board within department of corrections, and abolishment of Michigan parole and commutation board, see E.R.O. No. 2011-3, compiled at MCL 791.305.

Effective date: Enacting section 1 of Act 27 of 2009 provides:

"Enacting section 1. This amendatory act takes effect July 1, 2009, and applies only to crimes committed on or after that date."

769.1b Review hearing for juvenile placed on probation and committed; determination; considerations; time of review hearing; notice; legal counsel; costs; commitment reports; final review; imposition of sentence for adult offender; notice; cost of appointed counsel; credit for time served.

Sec. 1b. (1) If a juvenile is placed on probation and committed under section 1(3) or (4) of this chapter to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309, the court shall conduct a review hearing to determine whether the juvenile has been rehabilitated and whether the juvenile presents a serious risk to public safety. If the court determines that the juvenile has not been rehabilitated or that the juvenile presents a serious risk to public safety, jurisdiction over the juvenile shall be continued or the court may commit the juvenile to the department of corrections as provided in this section. In making this determination, the court shall consider the following:

- (a) The extent and nature of the juvenile's participation in education, counseling, or work programs.
- (b) The juvenile's willingness to accept responsibility for prior behavior.
- (c) The juvenile's behavior in his or her current placement.
- (d) The juvenile's prior record and character and his or her physical and mental maturity.
- (e) The juvenile's potential for violent conduct as demonstrated by prior behavior.
- (f) The recommendations of the institution or agency charged with the juvenile's care for the juvenile's release or continued custody.

(g) Other information the prosecuting attorney or juvenile may submit.

(2) A review hearing shall be scheduled and held unless adjourned for good cause as near as possible to, but before, the juvenile's nineteenth birthday. If the institution or agency to which the juvenile was committed believes that the juvenile has been rehabilitated and that the juvenile does not present a serious risk to public safety, that institution or agency may petition the court to conduct a review hearing at any time before the juvenile becomes 19 years of age or, if the court has continued jurisdiction under subsection (1), at any time before the juvenile becomes 21 years of age.

(3) Not less than 14 days before a review hearing is to be conducted, the prosecuting attorney, juvenile, and, if addresses are known, the juvenile's parent or guardian shall be notified. The notice shall state that the

court may extend jurisdiction over the juvenile and shall advise the juvenile and the juvenile's parent or guardian of the right to legal counsel. If legal counsel has not been retained or appointed to represent the juvenile, the court shall appoint legal counsel and may assess the cost of providing counsel as costs against the juvenile or those responsible for the juvenile's support, or both, if the persons to be assessed are financially able to comply.

(4) The institution or agency charged with the care of the juvenile shall prepare commitment reports as provided in section 5 of the juvenile facilities act, 1988 PA 73, MCL 803.225, for use by the court at a review hearing held under this section.

(5) The court shall conduct a final review of the juvenile's probation and commitment under section 1(3) or (4) of this chapter not less than 3 months before the end of the period that the juvenile is on probation and committed to the institution or agency. If the court determines at this review that the best interests of the public would be served by imposing any other sentence provided by law for an adult offender, the court may impose the sentence. In making its determination, the court shall consider the criteria specified in subsection (1) and all of the following criteria:

- (a) The effect of treatment on the juvenile's rehabilitation.
- (b) Whether the juvenile is likely to be dangerous to the public if released.
- (c) The best interests of the public welfare and the protection of public security.

(6) Not less than 14 days before a final review hearing under subsection (5) is to be conducted, the prosecuting attorney, juvenile, and, if addresses are known, the juvenile's parent or guardian shall be notified. The notice shall state that the court may impose a sentence upon the juvenile under subsection (5) and shall advise the juvenile and the juvenile's parent or guardian of the right to legal counsel. If legal counsel has not been retained or appointed to represent the juvenile, the court shall appoint legal counsel and may assess the cost of providing counsel as costs against the juvenile or those responsible for the juvenile's support, or both, if the persons to be assessed are financially able to comply.

(7) After a sentence is imposed under subsection (1) or (5), the juvenile shall receive credit for the period of time served on probation and committed to an agency or institution under section 1(3) or (4) of this chapter.

History: Add. 1988, Act 78, Eff. Oct. 1, 1988;—Am. 1996, Act 247, Eff. Jan. 1, 1997;—Am. 1998, Act 520, Imd. Eff. Jan. 12, 1999.

Compiler's note: Section 3 of Act 78 of 1988 provides: "This amendatory act shall take effect June 1, 1988." This section was amended by Act 181 of 1988 to read as follows: "This amendatory act shall take effect October 1, 1988."

769.1c Psychiatrist; definition; aid from state hospitals.

Sec. 1c. A psychiatrist under the meaning of the foregoing sections and sections 22-a and 22-b of chapter 14 of this act is a physician, duly licensed to practice in the state of Michigan, who has had at least 5 years experience in actual practice, including either (a) 3 years' full time practice since January 1, 1933, in the care and treatment of persons suffering from nervous or mental disease or mental defect, in an institution provided for the care of such persons, or (b) has devoted 5 years prior to the case in which his services are requested, to a practice confined wholly or substantially to the diagnosis, care or treatment of persons suffering from nervous and mental disease or mental defect. If no qualified psychiatrist is immediately available for the purposes of aiding the court in any investigation under the foregoing sections or sections 22-a and 22-b of chapter 14 of this act, the nearest state hospital shall be required to furnish, upon request of the court, without charge, a competent psychiatrist within the meaning of this act.

History: Add. 1937, Act 196, Imd. Eff. July 14, 1937;—CL 1948, 769.1c.

Compiler's note: For provisions of sections 22a and 22b of chapter 14, referred to in this section, see MCL 774.22a and 774.22b.

769.1d Expense of confinement in state institutions.

Sec. 1d. The expenses of confinement of any person confined to a state hospital or other state institution as provided for in the foregoing sections and sections 22-a and 22-b of chapter 14 of this act, shall be defrayed by the state and may be recovered from such person or his estate.

History: Add. 1937, Act 196, Imd. Eff. July 14, 1937;—CL 1948, 769.1d.

Compiler's note: For provisions of sections 22a and 22b of chapter 14, referred to in this section, see MCL 774.22a and 774.22b.

769.1e Violations of criminal law; licensing sanctions; report of finding to secretary of state; "license" defined.

Sec. 1e. (1) If a law of this state requires the court to deny the issuance of a license to a person, or revoke, suspend, or restrict the license of a person, for a violation of a criminal law of this state or a local ordinance substantially corresponding to a criminal law of this state, the court shall impose the licensing sanctions as provided by law for the violation.

(2) The licensing sanctions referred to in subsection (1) include, but are not limited to, the licensing sanctions required under section 7408a of the public health code, 1978 PA 368, MCL 333.7408a.

(3) A court shall report a finding made by a jury or the court to the secretary of state as required under section 625 of the Michigan vehicle code, 1949 PA 300, MCL 257.625.

(4) As used in this section, "license" means that term as defined in section 25 of the Michigan vehicle code, 1949 PA 300, MCL 257.25.

History: Add. 1993, Act 360, Eff. Sept. 1, 1994;—Am. 2000, Act 220, Eff. Oct. 1, 2000.

769.1f Expenses for which court may order person convicted to reimburse state or local unit of government; payment; reimbursement as condition of probation or parole; enforcement of order; expenses for emergency response; definitions.

Sec. 1f. (1) As part of the sentence for a conviction of any of the following offenses, in addition to any other penalty authorized by law, the court may order the person convicted to reimburse the state or a local unit of government for expenses incurred in relation to that incident including, but not limited to, expenses for an emergency response and expenses for prosecuting the person, as provided in this section:

(a) A violation or attempted violation of section 601d, 625(1), (3), (4), (5), (6), or (7), section 625m, or section 626(3) or (4) of the Michigan vehicle code, 1949 PA 300, MCL 257.601d, 257.625, 257.625m, and 257.626, or of a local ordinance substantially corresponding to section 601d(1), 625(1), (3), or (6) or section 625m or 626 of the Michigan vehicle code, 1949 PA 300, MCL 257.601d, 257.625, 257.625m, and 257.626.

(b) Felonious driving, negligent homicide, manslaughter, or murder, or attempted felonious driving, negligent homicide, manslaughter, or murder, resulting from the operation of a motor vehicle, snowmobile, ORV, aircraft, vessel, or locomotive engine while the person was impaired by or under the influence of intoxicating liquor or a controlled substance, as defined in section 7104 of the public health code, 1978 PA 368, MCL 333.7104, or a combination of intoxicating liquor and a controlled substance, or had an unlawful blood alcohol content.

(c) A violation or attempted violation of section 82127 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.82127.

(d) A violation or attempted violation of section 81134 or former section 81135 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.81134.

(e) A violation or attempted violation of section 185 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.185.

(f) A violation or attempted violation of section 80176(1), (3), (4), or (5) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.80176, or a local ordinance substantially corresponding to section 80176(1) or (3) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.80176.

(g) A violation or attempted violation of section 353 of the railroad code of 1993, 1993 PA 354, MCL 462.353.

(h) A violation or attempted violation of section 411a(1), (2), or (4) of the Michigan penal code, 1931 PA 328, MCL 750.411a.

(i) A finding of guilt for criminal contempt for a violation of a personal protection order issued under section 2950 or 2950a of the revised judiciary act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, or for a violation of a foreign protection order that satisfies the conditions for validity provided in section 2950i of the revised judiciary act of 1961, 1961 PA 236, MCL 600.2950i.

(j) A violation or attempted violation of section 4(1) of the public threat alert act, MCL 28.674.

(2) The expenses for which reimbursement may be ordered under this section include all of the following:

(a) The salaries or wages, including overtime pay, of law enforcement personnel for time spent responding to the incident from which the conviction arose, arresting the person convicted, processing the person after the arrest, preparing reports on the incident, investigating the incident, and collecting and analyzing evidence, including, but not limited to, determining bodily alcohol content and determining the presence of and identifying controlled substances in the blood, breath, or urine.

(b) The salaries, wages, or other compensation, including overtime pay, of fire department and emergency medical service personnel, including volunteer fire fighters or volunteer emergency medical service personnel, for time spent in responding to and providing fire fighting, rescue, and emergency medical services in relation to the incident from which the conviction arose.

(c) The cost of medical supplies lost or expended by fire department and emergency medical service personnel, including volunteer fire fighters or volunteer emergency medical service personnel, in providing services in relation to the incident from which the conviction arose.

(d) The salaries, wages, or other compensation, including, but not limited to, overtime pay of prosecution

personnel for time spent investigating and prosecuting the crime or crimes resulting in conviction.

(e) The cost of extraditing a person from another state to this state including, but not limited to, all of the following:

(i) Transportation costs.

(ii) The salaries or wages of law enforcement and prosecution personnel, including overtime pay, for processing the extradition and returning the person to this state.

(3) If police, fire department, or emergency medical service personnel from more than 1 unit of government incurred expenses as described in subsection (2), the court may order the person convicted to reimburse each unit of government for the expenses it incurred.

(4) The amount ordered to be paid under this section shall be paid to the clerk of the court, who shall transmit the appropriate amount to the unit or units of government named in the order to receive reimbursement. If not otherwise provided by the court under this subsection, the reimbursement ordered under this section shall be made immediately. However, the court may require that the person make the reimbursement ordered under this section within a specified period or in specified installments.

(5) If the person convicted is placed on probation or paroled, any reimbursement ordered under this section shall be a condition of that probation or parole. The court may revoke probation and the parole board may revoke parole if the person fails to comply with the order and if the person has not made a good faith effort to comply with the order. In determining whether to revoke probation or parole, the court or parole board shall consider the person's employment status, earning ability, number of dependents, and financial resources, the willfulness of the person's failure to pay, and any other special circumstances that may have a bearing on the person's ability to pay.

(6) An order for reimbursement under this section may be enforced by the prosecuting attorney or the state or local unit of government named in the order to receive the reimbursement in the same manner as a judgment in a civil action.

(7) Notwithstanding any other provision of this section, a person shall not be imprisoned, jailed, or incarcerated for a violation of parole or probation, or otherwise, for failure to make a reimbursement as ordered under this section unless the court determines that the person has the resources to pay the ordered reimbursement and has not made a good faith effort to do so.

(8) A local unit of government may elect to be reimbursed for expenses under this section or a local ordinance, or a combination of this section and a local ordinance. This subsection does not allow a local unit of government to be fully reimbursed more than once for any expense incurred by that local unit of government.

(9) As part of the sentence for a conviction of any violation or attempted violation of chapter XXXIII, section 327, 327a, 328, or 436, or chapter LXXXIII-A of the Michigan penal code, 1931 PA 328, MCL 750.200 to 750.212a, 750.327, 750.327a, 750.328, and 750.436, and 750.543a to 750.543z, in addition to any other penalty authorized by law, the court shall order the person convicted to reimburse any government entity for expenses incurred in relation to that incident including, but not limited to, expenses for an emergency response and expenses for prosecuting the person, as provided in subsections (2) to (8). As used in this subsection, "government entity" means this state, a local unit of government, or the United States government.

(10) As used in this section:

(a) "Aircraft" means that term as defined in section 2 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.2.

(b) "Local unit of government" means any of the following:

(i) A city, village, township, or county.

(ii) A local or intermediate school district.

(iii) A public school academy.

(iv) A community college.

(c) "Motor vehicle" means that term as defined in section 33 of the Michigan vehicle code, 1949 PA 300, MCL 257.33.

(d) "ORV" means that term as defined in section 81101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.81101.

(e) "Snowmobile" means that term as defined in section 82101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.82101.

(f) "State" includes a state institution of higher education.

(g) "Vessel" means that term as defined in section 80104 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.80104.

History: Add. 1998, Act 345, Eff. Oct. 1, 1999;—Am. 2000, Act 372, Eff. Apr. 1, 2001;—Am. 2001, Act 208, Eff. Apr. 1, 2002;—Am. 2002, Act 120, Eff. Apr. 22, 2002;—Am. 2008, Act 466, Eff. Oct. 31, 2010;—Am. 2012, Act 331, Eff. Jan. 1, 2013;—Am. 2016, Act 236, Eff. Sept. 22, 2016.

Compiler's note: For transfer of powers and duties of Michigan parole and commutation board to Michigan parole board within department of corrections, and abolishment of Michigan parole and commutation board, see E.R.O. No. 2011-3, compiled at MCL 791.305.

769.1g Offense relating to riot, incitement to riot, unlawful assembly or civil disorder within public community college, college, or university campus.

Sec. 1g. (1) As part of the sentence for a conviction for any offense that the court determines was directly related to a riot, incitement to riot, unlawful assembly or civil disorder on or within 2,500 feet of a public community college, public college, or public university campus in this state, the following apply:

(a) The court may order the individual not to enter upon any public community college, public college, or public university campus in this state as follows:

(i) If the offense is a felony, for 2 years following the imposition of sentence or, if the person is ordered imprisoned for the violation, the completion of the term of imprisonment.

(ii) If the offense is a misdemeanor, for 1 year following the imposition of sentence or, if the person is ordered incarcerated for the violation, the completion of the term of incarceration.

(b) The court may order the individual to reimburse the public community college, public college, or public university, or this state, or a local unit of government of this state for expenses incurred as a result of the riot, incitement to riot, unlawful assembly, or civil disorder. The amount shall be reasonable and shall not exceed the individual's pro rata share of the costs. Reimbursement under this section shall otherwise be made in the same manner as reimbursement is made under section 1f of this chapter.

(2) If the prosecuting attorney or the attorney for a city, village, or township intends to seek an order under subsection (1), the prosecuting attorney or the attorney for that city, village, or township shall include on the complaint or information the following statement:

“Take notice that if convicted, the defendant may be subject to the provisions of MCL 769.1g.”.

(3) The existence of the facts resulting in the issuance of an order under this section shall be determined by the court, without a jury, at sentencing or at a separate hearing for that purpose before sentencing.

(4) If a complaint or amended complaint is filed under this section after a plea but before sentencing, the defendant shall be given an opportunity to withdraw his or her plea before sentencing.

(5) An order issued under this section shall not apply to any of the following:

(a) Entering onto a public community college, public college, or public university campus to obtain medical treatment.

(b) Traveling on a public highway situated on a public community college, public college, or public university campus for purposes of traveling to a location other than that public community college, public college, or public university.

(6) If the individual is placed in the jurisdiction of the department of corrections for the violation, the court may request the parole board to prohibit the individual from entering onto a public community college, public college, or public university campus in this state for 2 years as provided in subsection (1) as a condition of parole.

(7) An order imposed under subsection (1) may be in addition to any other penalty or condition of probation imposed for the violation.

(8) This section does not require any person to be convicted of riot, incitement to riot, unlawful assembly, or civil disorder.

(9) As used in this section:

(a) “Civil disorder” means conduct proscribed under section 528 or 528a of the Michigan penal code, 1931 PA 328, MCL 750.528 and 750.528a.

(b) “Felony” means that term as defined in section 1 of chapter I.

(c) “Incitement to riot” means conduct proscribed under section 2 of 1968 PA 302, MCL 752.542.

(d) “Misdemeanor” means that term as defined in section 1 of chapter I.

(e) “Riot” means conduct proscribed under section 1 of 1968 PA 302, MCL 752.541.

(f) “Unlawful assembly” means conduct proscribed under section 3 of 1968 PA 302, MCL 752.543.

History: Add. 2000, Act 51, Eff. June 1, 2000.

Compiler's note: For transfer of powers and duties of Michigan parole and commutation board to Michigan parole board within department of corrections, and abolishment of Michigan parole and commutation board, see E.R.O. No. 2011-3, compiled at MCL 791.305.

769.1h Consecutive or concurrent sentence.

Sec. 1h. (1) A judgment of sentence committing an individual to the jurisdiction of the department of corrections shall specify whether the sentence is to run consecutively to or concurrently with any other sentence the defendant is or will be serving, as provided by law.

(2) Upon sentencing a defendant, the court shall provide a copy of the judgment of sentence to the prosecuting attorney, the defendant, and the defendant's counsel.

(3) The prosecuting attorney or the defendant's counsel, or the defendant if he or she is not represented, may file an objection to the judgment of sentence on the issue of whether the sentence is to run consecutively to or concurrent with any other sentence the defendant is or will be serving. The court shall promptly hold a hearing on any objection filed. The procedure for reviewing a judgment of sentence provided in this subsection is in addition to any other review procedure authorized by statute or court rule.

History: Add. 2000, Act 220, Eff. Oct. 1, 2000.

769.1j Court ordered fine, costs, or assessments; minimum amounts; definitions.

Sec. 1j. (1) Beginning October 1, 2003, if the court orders a person convicted of an offense to pay any combination of a fine, costs, or applicable assessments, the court shall order that the person pay costs of not less than the following amount, as applicable:

(a) \$68.00, if the defendant is convicted of a felony.

(b) \$50.00, if the defendant is convicted of a misdemeanor or ordinance violation.

(2) Of the costs ordered to be paid by a person convicted of an offense, the clerk shall pay to the justice system fund created in section 181 of the revised judiciary act of 1961, 1961 PA 236, MCL 600.181, the applicable amount specified as a minimum cost under subsection (1).

(3) Payment of the minimum state cost is a condition of probation under chapter XI of this act.

(4) If a defendant who is ordered to pay a minimum state cost under subsection (1) posts a cash bond or bail deposit in connection with the case, the court shall order that the minimum state cost be collected out of the bond or deposit as provided in section 15 of chapter V of this act or section 6 or 7 of 1966 PA 257, MCL 780.66 and 780.67.

(5) If a defendant who is ordered to pay a minimum state cost under this section is subject to any combination of fines, costs, restitution, assessments, or payments arising out of the same criminal prosecution, money collected from that person for the payment of fines, costs, restitution, assessments, or other payments shall be allocated as provided in section 22 of chapter XV. A fine imposed for a felony, misdemeanor, or ordinance violation shall not be waived unless costs, other than the minimum cost ordered under subsection (2), are waived.

(6) On the last day of each month, the clerk of the court shall transmit the minimum state cost or portions of minimum state cost collected under this section to the department of treasury for deposit in the justice system fund created in section 181 of the revised judiciary act of 1961, 1961 PA 236, MCL 600.181.

(7) As used in this section:

(a) "Felony" means a violation of a penal law of this state for which the offender may be punished by imprisonment for more than 1 year or an offense expressly designated by law to be a felony.

(b) "Minimum state cost" means the applicable minimum cost to be ordered for a conviction under subsection (1).

History: Add. 2003, Act 70, Eff. Oct. 1, 2003;—Am. 2008, Act 547, Eff. Apr. 1, 2009;—Am. 2011, Act 293, Eff. Apr. 1, 2012.

769.1k Imposition of fine, cost, or assessment; availability of information to defendant; reports; nonpayment of costs.

Sec. 1k. (1) If a defendant enters a plea of guilty or nolo contendere or if the court determines after a hearing or trial that the defendant is guilty, both of the following apply at the time of the sentencing or at the time entry of judgment of guilt is deferred pursuant to statute or sentencing is delayed pursuant to statute:

(a) The court shall impose the minimum state costs as set forth in section 1j of this chapter.

(b) The court may impose any or all of the following:

(i) Any fine authorized by the statute for a violation of which the defendant entered a plea of guilty or nolo contendere or the court determined that the defendant was guilty.

(ii) Any cost authorized by the statute for a violation of which the defendant entered a plea of guilty or nolo contendere or the court determined that the defendant was guilty.

(iii) Until 36 months after the date the amendatory act that added subsection (7) is enacted into law, any cost reasonably related to the actual costs incurred by the trial court without separately calculating those costs involved in the particular case, including, but not limited to, the following:

(A) Salaries and benefits for relevant court personnel.

(B) Goods and services necessary for the operation of the court.

(C) Necessary expenses for the operation and maintenance of court buildings and facilities.

(iv) The expenses of providing legal assistance to the defendant.

(v) Any assessment authorized by law.

(vi) Reimbursement under section 1f of this chapter.

(2) In addition to any fine, cost, or assessment imposed under subsection (1), the court may order the defendant to pay any additional costs incurred in compelling the defendant's appearance.

(3) Subsections (1) and (2) apply even if the defendant is placed on probation, probation is revoked, or the defendant is discharged from probation.

(4) The court may require the defendant to pay any fine, cost, or assessment ordered to be paid under this section by wage assignment.

(5) The court may provide for the amounts imposed under this section to be collected at any time.

(6) Except as otherwise provided by law, the court may apply payments received on behalf of a defendant that exceed the total of any fine, cost, fee, or other assessment imposed in the case to any fine, cost, fee, or assessment that the same defendant owes in any other case.

(7) Beginning January 1, 2015, the court shall make available to a defendant information about any fine, cost, or assessment imposed under subsection (1), including information about any cost imposed under subsection (1)(b)(iii). However, the information is not required to include the calculation of the costs involved in a particular case.

(8) If the court imposes any cost under subsection (1)(b)(iii), no later than March 31 of each year the clerk of the court shall transmit a report to the state court administrative office in a manner prescribed by the state court administrative office that contains all of the following information for the previous calendar year:

(a) The name of the court.

(b) The total number of cases in which costs under subsection (1)(b)(iii) were imposed by that court.

(c) The total amount of costs that were imposed by that court under subsection (1)(b)(iii).

(d) The total amount of costs imposed under subsection (1)(b)(iii) that were collected by that court.

(9) No later than July 1 of each year, the state court administrative office shall compile all data submitted under subsection (8) during the preceding calendar year and submit a written report to the governor, the secretary of the senate, and the clerk of the house of representatives. The report described in this subsection shall be made available to the public by the secretary of the senate and the clerk of the house of representatives.

(10) A defendant shall not be imprisoned, jailed, or incarcerated for the nonpayment of costs ordered under this section unless the court determines that the defendant has the resources to pay the ordered costs and has not made a good-faith effort to do so.

History: Add. 2005, Act 316, Eff. Jan. 1, 2006;—Am. 2006, Act 655, Imd. Eff. Jan. 9, 2007;—Am. 2014, Act 352, Imd. Eff. Oct. 17, 2014.

Compiler's note: Enacting section 1 of Act 352 of 2014 provides:

"Enacting section 1. This amendatory act applies to all fines, costs, and assessments ordered or assessed under section 1k of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1k, before June 18, 2014, and after the effective date of this amendatory act."

Enacting section 2 of Act 352 of 2014 provides:

"Enacting section 2. This amendatory act is a curative measure that addresses the authority of courts to impose costs under section 1k of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1k, before the issuance of the supreme court opinion in People v. Cunningham, 496 Mich 145 (2014)."

769.1/ Order of restitution; deduction; payment to court; priority.

Sec. 1f. If a prisoner under the jurisdiction of the department of corrections has been ordered to pay any sum of money as described in section 1k and the department of corrections receives an order from the court on a form prescribed by the state court administrative office, the department of corrections shall deduct 50% of the funds received by the prisoner in a month over \$50.00 and promptly forward a payment to the court as provided in the order when the amount exceeds \$100.00, or the entire amount if the prisoner is paroled, is transferred to community programs, or is discharged on the maximum sentence. The department of corrections shall give an order of restitution under section 20h of the corrections code of 1953, 1953 PA 232, MCL 791.220h, or the crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, priority over an order received under this section.

History: Add. 2005, Act 325, Eff. Jan. 1, 2006.

***** 769.2 THIS SECTION IS REPEALED BY ACT 216 OF 2015 EFFECTIVE MARCH 14, 2016 *****

769.2 Sentence; solitary confinement or hard labor.

Sec. 2. Whenever any person shall be lawfully sentenced by any court to imprisonment in the state prison
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or in any county jail, it shall be competent for the court awarding the sentence, to incorporate therein a provision that the person so sentenced shall be kept in solitary confinement or at hard labor, or both, during the term of such imprisonment, or any specific portion thereof.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17330;—CL 1948, 769.2.

Former law: See section 1 of Ch. 163 of R.S. 1846, being CL 1857, § 6100; CL 1871, § 7984; How., § 9600; CL 1897, § 11970; and CL 1915, § 15843.

769.2a Persons sentenced for certain crimes not eligible for custodial incarceration outside state correctional facility or county jail; “state correctional facility” defined; effect of security classification waiver.

Sec. 2a. (1) If a person is sentenced by a court to imprisonment, or is serving a sentence of imprisonment, for any of the following crimes, the person shall not be eligible for custodial incarceration outside a state correctional facility or a county jail:

(a) Sections 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g of the Michigan Compiled Laws.

(b) Former section 520 of Act No. 328 of the Public Acts of 1931.

(c) Murder in connection with sexual misconduct.

(d) An attempt to commit a crime described in subdivision (a), (b), or (c).

(2) As used in this section, “state correctional facility” means a facility or institution which is maintained and operated, or contracted for, by the department of corrections, other than a community corrections center, halfway house, resident home, prison farm housing unit, camp, the Cassidy lake technical school, or the Michigan reformatory trustee division, located at Ionia.

(3) A prisoner who receives a security classification waiver shall not be housed in a prison farm housing unit, or the Michigan reformatory trustee division located at Ionia.

History: Add. 1953, Act 130, Eff. Oct. 2, 1953;—Am. 1986, Act 110, Imd. Eff. May 23, 1986.

769.3 Conditional sentence; payment of fine; probation.

Sec. 3. (1) If a person is convicted of an offense punishable by a fine or imprisonment, or both, the court may impose a conditional sentence and order the person to pay a fine, with or without the costs of prosecution, and restitution as provided under section 1a of this chapter or the crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, within a limited time stated in the sentence and, in default of payment, sentence the person as provided by law.

(2) Except for a person who is convicted of criminal sexual conduct in the first or third degree, the court may also place the offender on probation with the condition that the offender pay a fine, costs, damages, restitution, or any combination in installments with any limited time and may, upon default in any of those payments, impose sentence as provided by law.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17331;—CL 1948, 769.3;—Am. 1982, Act 470, Eff. Mar. 30, 1983;—Am. 1998, Act 231, Imd. Eff. July 3, 1998.

Former law: See section 2 of Ch. 163 of R.S. 1846, being CL 1857, § 6101; CL 1871, § 7985; How., § 9601; CL 1897, § 11971; and CL 1915, § 15844.

769.4 Conditional sentence; execution.

Sec. 4. The person against whom any such conditional sentence shall be awarded, shall be forthwith committed to the custody of an officer in court or to the county jail, to be detained until the sentence be complied with; and if he shall not pay the fine within the time limited, the sheriff shall cause the other part of the sentence to be executed forthwith.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17332;—CL 1948, 769.4.

Former law: See section 3 of Ch. 163 of R.S. 1846, being CL 1857, § 6102; CL 1871, § 7986; How., § 9602; CL 1897, § 11972; and CL 1915, § 15845.

769.4a Assault on spouse, former spouse, individual with child in common, dating relationship, or household resident; plea or finding of guilty; deferral of proceedings; order of probation; previous convictions; adjudication of guilt upon violation of probation; mandatory counseling program; costs; circumstances for entering adjudication of guilt; discharge and dismissal; limitation; court proceedings open to public; retention of nonpublic record by department of state police; definitions.

Sec. 4a. (1) When an individual who has not been convicted previously of an assaultive crime pleads guilty

to, or is found guilty of, a violation of section 81 or 81a of the Michigan penal code, 1931 PA 328, MCL 750.81 and 750.81a, and the victim of the assault is the offender's spouse or former spouse, an individual who has had a child in common with the offender, an individual who has or has had a dating relationship with the offender, or an individual residing or having resided in the same household as the offender, the court, without entering a judgment of guilt and with the consent of the accused and of the prosecuting attorney in consultation with the victim, may defer further proceedings and place the accused on probation as provided in this section. However, before deferring proceedings under this subsection, the court shall contact the department of state police and determine whether, according to the records of the department of state police, the accused has previously been convicted of an assaultive crime or has previously availed himself or herself of this section. If the search of the records reveals an arrest for an assaultive crime but no disposition, the court shall contact the arresting agency and the court that had jurisdiction over the violation to determine the disposition of that arrest for purposes of this section.

(2) Upon a violation of a term or condition of probation, the court may enter an adjudication of guilt and proceed as otherwise provided in this chapter.

(3) An order of probation entered under subsection (1) may include any condition of probation authorized under section 3 of chapter XI, including, but not limited to, requiring the accused to participate in a mandatory counseling program. The court may order the accused to pay the reasonable costs of the mandatory counseling program. The court also may order the accused to participate in a drug treatment court under chapter 10A of the revised judiciary act of 1961, 1961 PA 236, MCL 600.1060 to 600.1084. The court may order the defendant to be imprisoned for not more than 12 months at the time or intervals, which may be consecutive or nonconsecutive and within the period of probation, as the court determines. However, the period of imprisonment shall not exceed the maximum period of imprisonment authorized for the offense if the maximum period is less than 12 months. The court may permit day parole as authorized under 1962 PA 60, MCL 801.251 to 801.258. The court may permit a work or school release from jail.

(4) The court shall enter an adjudication of guilt and proceed as otherwise provided in this chapter if any of the following circumstances exist:

(a) The accused commits an assaultive crime during the period of probation.

(b) The accused violates an order of the court that he or she receive counseling regarding his or her violent behavior.

(c) The accused violates an order of the court that he or she have no contact with a named individual.

(5) Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against the person. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, but it is a prior conviction in a prosecution under sections 81(3) and (4) and 81a(3) of the Michigan penal code, 1931 PA 328, MCL 750.81 and 750.81a. There shall be only 1 discharge and dismissal under this section with respect to any individual.

(6) All court proceedings under this section shall be open to the public. Except as provided in subsection (7), if the record of proceedings as to the defendant is deferred under this section, the record of proceedings during the period of deferral shall be closed to public inspection.

(7) Unless the court enters a judgment of guilt under this section, the department of state police shall retain a nonpublic record of the arrest, court proceedings, and disposition of the criminal charge under this section. However, the nonpublic record shall be open to the following individuals and entities for the purposes noted:

(a) The courts of this state, law enforcement personnel, the department of corrections, and prosecuting attorneys for use only in the performance of their duties or to determine whether an employee of the court, law enforcement agency, department of corrections, or prosecutor's office has violated his or her conditions of employment or whether an applicant meets criteria for employment with the court, law enforcement agency, department of corrections, or prosecutor's office.

(b) The courts of this state, law enforcement personnel, and prosecuting attorneys for either of the following purposes:

(i) Showing that a defendant in a criminal action under section 81 or 81a of the Michigan penal code, 1931 PA 328, MCL 750.81 and 750.81a, or a local ordinance substantially corresponding to section 81 of that act has already once availed himself or herself of this section.

(ii) Determining whether the defendant in a criminal action is eligible for discharge and dismissal of proceedings by a drug treatment court under section 1076(5) of the revised judiciary act of 1961, 1961 PA 236, MCL 600.1076.

(c) The department of human services for enforcing child protection laws and vulnerable adult protection laws or ascertaining the preemployment criminal history of any individual who will be engaged in the enforcement of child protection laws or vulnerable adult protection laws.

(8) As used in this section:

(a) "Assaultive crime" means 1 or more of the following:

(i) That term as defined in section 9a of chapter X.

(ii) A violation of chapter XI of the Michigan penal code, 1931 PA 328, MCL 750.81 to 750.90h.

(iii) A violation of a law of another state or of a local ordinance of a political subdivision of this state or of another state substantially corresponding to a violation described in subparagraph (i) or (ii).

(b) "Dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional involvement. This term does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.

History: Add. 1978, Act 353, Imd. Eff. July 14, 1978;—Am. 1980, Act 471, Eff. Mar. 31, 1981;—Am. 1994, Act 68, Eff. July 1, 1994;—Am. 2001, Act 208, Eff. Apr. 1, 2002;—Am. 2004, Act 220, Eff. Jan. 1, 2005;—Am. 2006, Act 663, Imd. Eff. Jan. 10, 2007;—Am. 2012, Act 364, Eff. Apr. 1, 2013;—Am. 2012, Act 550, Eff. Apr. 1, 2013;—Am. 2013, Act 222, Eff. Jan. 1, 2014.

769.5 Alternative or combined penalties; power of court.

Sec. 5. (1) If a statute provides that an offense is punishable by imprisonment and a fine, the court may impose imprisonment without the fine or the fine without imprisonment.

(2) If a statute provides that an offense is punishable by fine or imprisonment, the court may impose both the fine and imprisonment in its discretion.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17333;—CL 1948, 769.5;—Am. 2015, Act 216, Eff. Mar. 14, 2016.

Former law: See Act 115 of 1839; and Sec. 4 of Ch. 163 of R.S. 1846, being CL 1857, § 6103; CL 1871, § 7987; How., § 9603; CL 1897, § 11973; CL 1915, § 15846.

769.6 Recognizance to keep peace; court option.

Sec. 6. Every court before whom any person shall be convicted upon an indictment for any offense not punishable with death or by imprisonment in the state prison may, in addition to the punishment prescribed by law, require such person to recognize with sufficient sureties in a reasonable sum, to keep the peace or to be of good behavior, or both, for any time not exceeding 2 years and to stand committed until he shall so recognize.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17334;—CL 1948, 769.6.

Former law: See section 5 of Ch. 163 of R.S. 1846, being 1857, § 6104; CL 1871, § 7988; How., § 9604; CL 1897, § 11974; and CL 1915, § 15847.

769.7 Recognizance to keep peace; breach of condition; procedure.

Sec. 7. In case of a breach of the condition of any such recognizance the same proceedings shall be had as are prescribed in relation to recognizances to keep the peace in other cases.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17335;—CL 1948, 769.7.

Former law: See section 6 of Ch. 163 of R.S. 1846, being CL 1857, § 6105; CL 1871, § 7989; How., § 9605; CL 1897, § 11975; and CL 1915, § 15848.

769.8 Definite term prohibited for conviction for first time for felony; fixing minimum term; stating maximum term; examination of convict; entering facts in minutes of court.

Sec. 8. (1) When a person is convicted for the first time for committing a felony and the punishment prescribed by law for that offense may be imprisonment in a state prison, the court imposing sentence shall not fix a definite term of imprisonment, but shall fix a minimum term, except as otherwise provided in this chapter. The maximum penalty provided by law shall be the maximum sentence in all cases except as provided in this chapter and shall be stated by the judge in imposing the sentence.

(2) Before or at the time of imposing sentence, the judge shall ascertain by examining the defendant under oath, or otherwise, and by other evidence as can be obtained tending to indicate briefly the causes of the defendant's criminal character or conduct, which facts and other facts that appear to be pertinent in the case the judge shall cause to be entered upon the minutes of the court.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17336;—CL 1948, 769.8;—Am. 1978, Act 77, Eff. Sept. 1, 1978;—Am. 1994, Act 322, Eff. (pending);—Am. 1998, Act 317, Eff. Dec. 15, 1998.

Former law: See section 1 of Act 184 of 1905, being CL 1915, § 15859; and Act 259 of 1921.

769.9 Indeterminate sentence inapplicable where only punishment is life imprisonment; indeterminate sentence in cases where imprisonment for life discretionary; indeterminate sentence in cases involving major controlled substance offense.

Sec. 9. (1) The provisions of this chapter relative to indeterminate sentences shall not apply to a person

convicted for the commission of an offense for which the only punishment prescribed by law is imprisonment for life.

(2) In all cases where the maximum sentence in the discretion of the court may be imprisonment for life or any number or term of years, the court may impose a sentence for life or may impose a sentence for any term of years. If the sentence imposed by the court is for any term of years, the court shall fix both the minimum and the maximum of that sentence in terms of years or fraction thereof, and sentences so imposed shall be considered indeterminate sentences. The court shall not impose a sentence in which the maximum penalty is life imprisonment with a minimum for a term of years included in the same sentence.

(3) In cases involving a major controlled substance offense for which the court is directed by law to impose a sentence which cannot be less than a specified term of years nor more than a specified term of years, the court in imposing the sentence shall fix the length of both the minimum and maximum sentence within those specified limits, in terms of years or fraction thereof, and the sentence so imposed shall be considered an indeterminate sentence.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17337;—CL 1948, 769.9;—Am. 1957, Act 193, Eff. Sept. 27, 1957;—Am. 1978, Act 77, Eff. Sept. 1, 1978.

Former law: See section 3 of Act 184 of 1905, being CL 1915, § 15861; and Act 259 of 1921.

769.10 Punishment for subsequent felony; sentence imposed for term of years considered indeterminate sentence; use of conviction to enhance sentence prohibited.

Sec. 10. (1) If a person has been convicted of a felony or an attempt to commit a felony, whether the conviction occurred in this state or would have been for a felony or attempt to commit a felony in this state if obtained in this state, and that person commits a subsequent felony within this state, the person shall be punished upon conviction of the subsequent felony and sentencing under section 13 of this chapter as follows:

(a) If the subsequent felony is punishable upon a first conviction by imprisonment for a term less than life, the court, except as otherwise provided in this section or section 1 of chapter XI, may place the person on probation or sentence the person to imprisonment for a maximum term that is not more than 1-1/2 times the longest term prescribed for a first conviction of that offense or for a lesser term.

(b) If the subsequent felony is punishable upon a first conviction by imprisonment for life, the court, except as otherwise provided in this section or section 1 of chapter XI, may place the person on probation or sentence the person to imprisonment for life or for a lesser term.

(c) If the subsequent felony is a major controlled substance offense, the person shall be punished as provided by part 74 of the public health code, 1978 PA 368, MCL 333.7401 to 333.7461.

(2) If the court pursuant to this section imposes a sentence of imprisonment for any term of years, the court shall fix the length of both the minimum and maximum sentence within any specified limits in terms of years or a fraction of a year and the sentence so imposed shall be considered an indeterminate sentence. The court shall not fix a maximum sentence that is less than the maximum term for a first conviction.

(3) A conviction shall not be used to enhance a sentence under this section if that conviction is used to enhance a sentence under a statute that prohibits use of the conviction for further enhancement under this section.

History: 1927, Act 175, Eff. Sept. 5, 1927;—Am. 1929, Act 24, Imd. Eff. Apr. 2, 1929;—CL 1929, 17338;—CL 1948, 769.10;—Am. 1949, Act 56, Eff. Sept. 23, 1949;—Am. 1978, Act 77, Eff. Sept. 1, 1978;—Am. 1988, Act 90, Imd. Eff. Mar. 30, 1988;—Am. 1998, Act 317, Eff. Dec. 15, 1998;—Am. 2006, Act 655, Imd. Eff. Jan. 9, 2007.

Former law: See section 12 of Ch. 161 of R.S. 1846, being CL 1857, § 5948; CL 1871, § 7814; How., § 9424; CL 1897, § 11785; and CL 1915, § 15612.

769.11 Punishment for subsequent felony following conviction of 2 or more felonies; sentence for term of years considered indeterminate sentence; use of conviction to enhance sentence prohibited.

Sec. 11. (1) If a person has been convicted of any combination of 2 or more felonies or attempts to commit felonies, whether the convictions occurred in this state or would have been for felonies or attempts to commit felonies in this state if obtained in this state, and that person commits a subsequent felony within this state, the person shall be punished upon conviction of the subsequent felony and sentencing under section 13 of this chapter as follows:

(a) If the subsequent felony is punishable upon a first conviction by imprisonment for a term less than life, the court, except as otherwise provided in this section or section 1 of chapter XI, may sentence the person to imprisonment for a maximum term that is not more than twice the longest term prescribed by law for a first conviction of that offense or for a lesser term.

(b) If the subsequent felony is punishable upon a first conviction by imprisonment for life, the court,

except as otherwise provided in this section or section 1 of chapter XI, may sentence the person to imprisonment for life or for a lesser term.

(c) If the subsequent felony is a major controlled substance offense, the person shall be punished as provided by part 74 of the public health code, 1978 PA 368, MCL 333.7401 to 333.7461.

(2) If the court pursuant to this section imposes a sentence of imprisonment for any term of years, the court shall fix the length of both the minimum and maximum sentence within any specified limits in terms of years or a fraction of a year, and the sentence so imposed shall be considered an indeterminate sentence. The court shall not fix a maximum sentence that is less than the maximum term for a first conviction.

(3) A conviction shall not be used to enhance a sentence under this section if that conviction is used to enhance a sentence under a statute that prohibits use of the conviction for further enhancement under this section.

History: 1927, Act 175, Eff. Sept. 5, 1927;—Am. 1929, Act 24, Imd. Eff. Apr. 2, 1929;—CL 1929, 17339;—CL 1948, 769.11;—Am. 1949, Act 56, Eff. Sept. 23, 1949;—Am. 1978, Act 77, Eff. Sept. 1, 1978;—Am. 1988, Act 90, Imd. Eff. Mar. 30, 1988;—Am. 1998, Act 317, Eff. Dec. 15, 1998;—Am. 2006, Act 655, Imd. Eff. Jan. 9, 2007.

Compiler's note: Act 196 of 1971, referred to in this section, was repealed by Act 368 of 1978.

Former law: See section 13 of Ch. 161 of R.S. 1846, being CL 1857, § 5949; CL 1871, § 7815; How., § 9425; CL 1897, § 11786; and CL 1915, § 15613.

769.11a Void sentence; trial judge to credit time served.

Sec. 11a. Whenever any person has been heretofore or hereafter convicted of any crime within this state and has served any time upon a void sentence, the trial court, in imposing sentence upon conviction or acceptance of a plea of guilty based upon facts arising out of the earlier void conviction, shall in imposing the sentence specifically grant or allow the defendant credit against and by reduction of the statutory maximum by the time already served by such defendant on the sentence imposed for the prior erroneous conviction. Failure of the corrections commission to carry out the terms of said sentence shall be cause for the issuance of a writ of habeas corpus to have the prisoner brought before the court for the taking of such further action as the court may again determine.

History: Add. 1954, Act 205, Eff. Aug. 13, 1954;—Am. 1965, Act 67, Imd. Eff. June 22, 1965.

769.11b Credit time served prior to sentence; lack of bond.

Sec. 11b. Whenever any person is hereafter convicted of any crime within this state and has served any time in jail prior to sentencing because of being denied or unable to furnish bond for the offense of which he is convicted, the trial court in imposing sentence shall specifically grant credit against the sentence for such time served in jail prior to sentencing.

History: Add. 1965, Act 73, Eff. Mar. 31, 1966.

769.12 Punishment for subsequent felony following conviction of 3 or more felonies; sentence for term of years considered indeterminate sentence; use of conviction to enhance sentence prohibited; eligibility for parole; provisions not in derogation of consecutive sentence; definitions.

Sec. 12. (1) If a person has been convicted of any combination of 3 or more felonies or attempts to commit felonies, whether the convictions occurred in this state or would have been for felonies or attempts to commit felonies in this state if obtained in this state, and that person commits a subsequent felony within this state, the person shall be punished upon conviction of the subsequent felony and sentencing under section 13 of this chapter as follows:

(a) If the subsequent felony is a serious crime or a conspiracy to commit a serious crime, and 1 or more of the prior felony convictions are listed prior felonies, the court shall sentence the person to imprisonment for not less than 25 years. Not more than 1 conviction arising out of the same transaction shall be considered a prior felony conviction for the purposes of this subsection only.

(b) If the subsequent felony is punishable upon a first conviction by imprisonment for a maximum term of 5 years or more or for life, the court, except as otherwise provided in this section or section 1 of chapter XI, may sentence the person to imprisonment for life or for a lesser term.

(c) If the subsequent felony is punishable upon a first conviction by imprisonment for a maximum term that is less than 5 years, the court, except as otherwise provided in this section or section 1 of chapter XI, may sentence the person to imprisonment for a maximum term of not more than 15 years.

(d) If the subsequent felony is a major controlled substance offense, the person shall be punished as provided by part 74 of the public health code, 1978 PA 368, MCL 333.7401 to 333.7461.

(2) If the court imposes a sentence of imprisonment for any term of years under this section, the court shall

fix the length of both the minimum and maximum sentence within any specified limits in terms of years or a fraction of a year, and the sentence so imposed shall be considered an indeterminate sentence. The court shall not fix a maximum sentence that is less than the maximum term for a first conviction.

(3) A conviction shall not be used to enhance a sentence under this section if that conviction is used to enhance a sentence under a statute that prohibits use of the conviction for further enhancement under this section.

(4) An offender sentenced under this section or section 10 or 11 of this chapter for an offense other than a major controlled substance offense is not eligible for parole until expiration of the following:

(a) For a prisoner other than a prisoner subject to disciplinary time, the minimum term fixed by the sentencing judge at the time of sentence unless the sentencing judge or a successor gives written approval for parole at an earlier date authorized by law.

(b) For a prisoner subject to disciplinary time, the minimum term fixed by the sentencing judge.

(5) This section and sections 10 and 11 of this chapter are not in derogation of other provisions of law that permit or direct the imposition of a consecutive sentence for a subsequent felony.

(6) As used in this section:

(a) "Listed prior felony" means a violation or attempted violation of any of the following:

(i) Section 602a(4) or (5) or 625(4) of the Michigan vehicle code, 1949 PA 300, MCL 257.602a and 257.625.

(ii) Article 7 of the public health code, 1978 PA 368, MCL 333.7101 to 333.7545, that is punishable by imprisonment for more than 4 years.

(iii) Section 72, 82, 83, 84, 85, 86, 87, 88, 89, 91, 110a(2) or (3), 136b(2) or (3), 145n(1) or (2), 157b, 197c, 226, 227, 234a, 234b, 234c, 317, 321, 329, 349, 349a, 350, 397, 411h(2)(b), 411i, 479a(4) or (5), 520b, 520c, 520d, 520g, 529, 529a, or 530 of the Michigan penal code, 1931 PA 328, MCL 750.72, 750.82, 750.83, 750.84, 750.85, 750.86, 750.87, 750.88, 750.89, 750.91, 750.110a, 750.136b, 750.145n, 750.157b, 750.197c, 750.226, 750.227, 750.234a, 750.234b, 750.234c, 750.317, 750.321, 750.329, 750.349, 750.349a, 750.350, 750.397, 750.411h, 750.411i, 750.479a, 750.520b, 750.520c, 750.520d, 750.520g, 750.529, 750.529a, and 750.530.

(iv) A second or subsequent violation or attempted violation of section 227b of the Michigan penal code, 1931 PA 328, MCL 750.227b.

(v) Section 2a of 1968 PA 302, MCL 752.542a.

(b) "Prisoner subject to disciplinary time" means that term as defined in section 34 of 1893 PA 118, MCL 800.34.

(c) "Serious crime" means an offense against a person in violation of section 83, 84, 86, 88, 89, 317, 321, 349, 349a, 350, 397, 520b, 520c, 520d, 520g(1), 529, or 529a of the Michigan penal code, 1931 PA 328, MCL 750.83, 750.84, 750.86, 750.88, 750.89, 750.317, 750.321, 750.349, 750.349a, 750.350, 750.397, 750.520b, 750.520c, 750.520d, 750.520g, 750.529, and 750.529a.

History: 1927, Act 175, Eff. Sept. 5, 1927;—Am. 1929, Act 24, Imd. Eff. Apr. 2, 1929;—CL 1929, 17340;—CL 1948, 769.12;—Am. 1949, Act 56, Eff. Sept. 23, 1949;—Am. 1978, Act 77, Eff. Sept. 1, 1978;—Am. 1988, Act 90, Imd. Eff. Mar. 30, 1988;—Am. 1994, Act 445, Imd. Eff. Jan. 10, 1995;—Am. 1998, Act 317, Eff. Dec. 15, 1998;—Am. 2006, Act 655, Imd. Eff. Jan. 9, 2007;—Am. 2012, Act 319, Eff. Oct. 1, 2012.

769.13 Notice of intent to seek enhanced sentence; filing by prosecuting attorney; challenge to accuracy or constitutional validity; evidence of existence of prior conviction; determination by court; burden of proof.

Sec. 13. (1) In a criminal action, the prosecuting attorney may seek to enhance the sentence of the defendant as provided under section 10, 11, or 12 of this chapter, by filing a written notice of his or her intent to do so within 21 days after the defendant's arraignment on the information charging the underlying offense or, if arraignment is waived, within 21 days after the filing of the information charging the underlying offense.

(2) A notice of intent to seek an enhanced sentence filed under subsection (1) shall list the prior conviction or convictions that will or may be relied upon for purposes of sentence enhancement. The notice shall be filed with the court and served upon the defendant or his or her attorney within the time provided in subsection (1). The notice may be personally served upon the defendant or his or her attorney at the arraignment on the information charging the underlying offense, or may be served in the manner provided by law or court rule for service of written pleadings. The prosecuting attorney shall file a written proof of service with the clerk of the court.

(3) The prosecuting attorney may file notice of intent to seek an enhanced sentence after the defendant has been convicted of the underlying offense or a lesser offense, upon his or her plea of guilty or nolo contendere

if the defendant pleads guilty or nolo contendere at the arraignment on the information charging the underlying offense, or within the time allowed for filing of the notice under subsection (1).

(4) A defendant who has been given notice that the prosecuting attorney will seek to enhance his or her sentence as provided under section 10, 11, or 12 of this chapter, may challenge the accuracy or constitutional validity of 1 or more of the prior convictions listed in the notice by filing a written motion with the court and by serving a copy of the motion upon the prosecuting attorney in accordance with rules of the supreme court.

(5) The existence of the defendant's prior conviction or convictions shall be determined by the court, without a jury, at sentencing, or at a separate hearing scheduled for that purpose before sentencing. The existence of a prior conviction may be established by any evidence that is relevant for that purpose, including, but not limited to, 1 or more of the following:

- (a) A copy of a judgment of conviction.
- (b) A transcript of a prior trial or a plea-taking or sentencing proceeding.
- (c) A copy of a court register of actions.
- (d) Information contained in a presentence report.
- (e) A statement of the defendant.

(6) The court shall resolve any challenges to the accuracy or constitutional validity of a prior conviction or convictions that have been raised in a motion filed under subsection (4) at sentencing or at a separate hearing scheduled for that purpose before sentencing. The defendant, or his or her attorney, shall be given an opportunity to deny, explain, or refute any evidence or information pertaining to the defendant's prior conviction or convictions before sentence is imposed, and shall be permitted to present relevant evidence for that purpose. The defendant shall bear the burden of establishing a prima facie showing that an alleged prior conviction is inaccurate or constitutionally invalid. If the defendant establishes a prima facie showing that information or evidence concerning an alleged prior conviction is inaccurate, the prosecuting attorney shall bear the burden of proving, by a preponderance of the evidence, that the information or evidence is accurate. If the defendant establishes a prima facie showing that an alleged prior conviction is constitutionally invalid, the prosecuting attorney shall bear the burden of proving, by a preponderance of the evidence, that the prior conviction is constitutionally valid.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17341;—Am. 1941, Act 310, Eff. Jan. 10, 1942;—CL 1948, 769.13;—Am. 1949, Act 56, Eff. Sept. 23, 1949;—Am. 1978, Act 77, Eff. Sept. 1, 1978;—Am. 1994, Act 110, Eff. May 1, 1994;—Am. 2006, Act 655, Imd. Eff. Jan. 9, 2007.

769.14 Review of sentence of prisoner or parolee; application; rights of prisoner.

Sec. 14. Any person now incarcerated in any state prison, or on parole from a sentence thereto, who was sentenced under the terms of sections 10, 11, 12 or 13 of this chapter as in effect prior to the effective date of Act No. 56 of the Public Acts of 1949, shall be entitled to a review of sentence upon application to the court in which he was sentenced. Upon such application any judge of such court may vacate the previous sentence and impose any lesser sentence which in his judgment might have been imposed under sections 10, 11, 12 or 13 of this chapter, as amended by Act No. 56 of the Public Acts of 1949, had such sections as amended been in force at the date of the previous sentence imposed upon said prisoner: Provided, That any sentence so imposed shall be deemed to have begun as of the date of the previous sentence, and the rights of such prisoner under the laws shall be governed by the lesser sentence as then imposed.

History: Add. 1951, Act 159, Eff. Sept. 28, 1951.

Constitutionality: This section violates Const 1963, art V, § 14, which, by implication, forbids the judiciary from commuting a sentence and restricts the legislature from passing a law which infringes upon the exclusive power of the governor to commute a sentence. People v Freleigh, 334 Mich 306; 54 NW2d 599 (1952).

Former law: See section 14 of Chapter IX of Act 175 of 1927; and Act 328 of 1931.

769.16 Clerk of court and sheriff; duty in executing sentence; fine or imprisonment in county jail; transcript.

Sec. 16. When any person convicted of an offense shall be sentenced to pay a fine or costs, or to be imprisoned in the county jail, the clerk of the court shall, as soon as may be, make out and deliver to the sheriff of the county or some officer in court, a transcript from the minutes of the court, of the conviction and sentence duly certified by such clerk, which shall be sufficient authority for the sheriff to execute such sentence, and he shall execute the same accordingly.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17344;—CL 1948, 769.16.

Former law: See section 7 of Ch. 168 of R.S. 1846, being CL 1857, § 6106; CL 1871, § 7990; How., § 9606; CL 1897, § 11976; and CL 1915, § 15849.

769.16a Report by clerk of final disposition to department of state police; forms; fingerprints; reporting conviction; report of vacated judgment; entry of disposition into database.

Sec. 16a. (1) Except as otherwise provided in subsection (3), upon final disposition of an original charge against a person of a felony or a misdemeanor for which the maximum possible penalty exceeds 92 days' imprisonment or a local ordinance for which the maximum possible penalty is 93 days' imprisonment and that substantially corresponds to a violation of state law that is a misdemeanor for which the maximum possible penalty is 93 days' imprisonment, or a misdemeanor in a case in which the appropriate court was notified that fingerprints were forwarded to the department of state police, or upon final disposition of a charge of criminal contempt under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, or final disposition of a charge of criminal contempt for violating a foreign protection order that satisfies the conditions for validity provided in section 2950i of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950i, the clerk of the court entering the disposition shall immediately report to the department of state police the final disposition of the charge on forms approved by the state court administrator and in a manner consistent with section 3 of 1925 PA 289, MCL 28.243. The report to the department of state police shall include the finding of the judge or jury, including a finding of guilty, guilty but mentally ill, not guilty, or not guilty by reason of insanity, or the person's plea of guilty, nolo contendere, or guilty but mentally ill; if the person was convicted, the offense of which the person was convicted; and a summary of any sentence imposed. The summary of the sentence shall include any probationary term; any minimum, maximum, or alternative term of imprisonment; the total of all fines, costs, and restitution ordered; and any modification of sentence. The report shall include the sentence if imposed under any of the following:

- (a) Section 7411 of the public health code, 1978 PA 368, MCL 333.7411.
- (b) Section 1076(4) of the revised judicature act of 1961, 1961 PA 236, MCL 600.1076.
- (c) Section 350a of the Michigan penal code, 1931 PA 328, MCL 750.350a.
- (d) Section 430 of the Michigan penal code, 1931 PA 328, MCL 750.430.
- (e) Sections 11 to 15 of chapter II.
- (f) Section 4a of chapter IX.

(2) Upon sentencing a person convicted of a misdemeanor or of a violation of a local ordinance, other than a misdemeanor or local ordinance described in subsection (1), the clerk of the court imposing sentence immediately shall, if ordered by the court, advise the department of state police of the conviction on forms approved by the state court administrator.

(3) Except as otherwise provided in subsections (4) and (6), the clerk of a court shall not report a conviction of a misdemeanor offense under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, or a local ordinance substantially corresponding to a provision of that act unless 1 or more of the following apply:

- (a) The offense is punishable by imprisonment for more than 92 days.
- (b) The offense is an offense that would be punishable by more than 92 days as a second conviction.
- (c) A judge of the court orders the clerk to report the conviction.

(4) Unless ordered by the court, the clerk of a court is not required to report a conviction of a misdemeanor offense for a violation of section 904(3)(a) of the Michigan vehicle code, 1949 PA 300, MCL 257.904, or a local ordinance substantially corresponding to section 904(3)(a) of the Michigan vehicle code, 1949 PA 300, MCL 257.904.

(5) As part of the sentence for a conviction of an offense described in this section, if fingerprints have not already been taken, the court shall order that the fingerprints of the person convicted be taken and forwarded to the department of state police.

(6) As part of the sentence for a conviction of a listed offense as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722, the court shall order that the fingerprints of the person convicted be taken and forwarded as provided in the sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.736, if fingerprints have not already been taken and forwarded as provided in that act.

(7) Within 21 days after the date a person licensed or registered under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, is convicted of a misdemeanor involving the illegal delivery, possession, or use of alcohol or a controlled substance or a felony, the clerk of the court entering the conviction shall report the conviction to the department of community health on a form prescribed and furnished by that department.

(8) For any conviction that was reported as provided in this section, the clerk of the court entering a subsequent final disposition in the case shall immediately report to the department of state police and the department of corrections if the judgment of conviction is vacated and either the accusatory instrument is dismissed or upon retrial or by court finding, whether appellate or otherwise, the defendant is determined to

be not guilty. The final disposition shall be reported on forms approved by the state court administrator. The department of state police and department of corrections shall immediately enter the disposition into each database they maintain concerning criminal convictions and shall remove all information indicating that the person was convicted of the offense from each of those databases that is available to the public.

History: Add. 1986, Act 232, Eff. June 1, 1987;—Am. 1993, Act 85, Eff. Apr. 1, 1994;—Am. 1999, Act 87, Eff. Sept. 1, 1999;—Am. 2000, Act 220, Eff. Oct. 1, 2000;—Am. 2001, Act 188, Eff. Apr. 1, 2002;—Am. 2001, Act 204, Eff. Oct. 1, 2002;—Am. 2004, Act 220, Eff. Jan. 1, 2005;—Am. 2005, Act 106, Imd. Eff. Sept. 14, 2005;—Am. 2008, Act 508, Imd. Eff. Jan. 13, 2009.

769.16b Finding of not guilty by reason of insanity; entering order into Law Enforcement Information Network.

Sec. 16b. (1) If a person charged with any offense is found not guilty by reason of insanity, the court entering the disposition shall immediately order the department of state police to enter the disposition into the law enforcement information network.

(2) The department of state police shall immediately enter a disposition into the law enforcement information network as ordered by the court under this section.

History: Add. 1994, Act 335, Eff. Apr. 1, 1996.

769.17 Clerk of court and sheriff; duty in executing sentence; imprisonment in state prison; warrant, abstract of conviction.

Sec. 17. When any convict shall be sentenced to imprisonment in the state prison, the clerk of the court before whom such conviction was had, shall make out a warrant, under the seal of the court, directed to the sheriff of the county, requiring him to cause such convict, without needless delay, to be removed from the county jail to the state prison, which warrant shall be delivered to such sheriff and be obeyed by him and shall be accompanied by a certified abstract from the minutes of the court, of such conviction and sentence as aforesaid.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17345;—CL 1948, 769.17.

Former law: See section 8 of Ch. 168 of R.S. 1846, being CL 1857, § 6107; CL 1871, § 7991; How., § 9607; CL 1897, § 11977; and CL 1915, § 15850.

769.18 Record after sentence of imprisonment; duty of clerk; contents, forwarding, fee.

Sec. 18. Whenever a person shall be convicted of crime and sentenced to imprisonment pursuant to the provisions of this act, or for life, the clerk of the court shall make and forward to the warden or superintendent of the institution to which the convict is sentenced, and also to the governor, a record containing a copy of the information or complaint, the sentence pronounced by the court, the name and residence of the judge presiding at the trial, prosecuting attorney and sheriff, and the names and postoffice addresses of the jurors and witnesses sworn on the trial, together with a statement of any fact or facts which the presiding judge may deem important or necessary for a full comprehension of the case, and a reference to the statute under which the sentence was imposed. One copy of the said record shall be delivered to the warden or superintendent at the time the prisoner is received into the institution, and 1 copy shall be forwarded to the governor within 10 days thereafter. In each case in which he shall perform the duties required by this act, the clerk of the court shall be entitled to such compensation as shall be certified to be just by the presiding judge at the trial not to exceed 3 dollars for any 1 case, which shall be paid by the county in which the trial is had, as a part of the expenses of such trial.

History: 1927, Act 175, Eff. Sept. 5, 1927;—Am. 1929, Act 188, Imd. Eff. May 20, 1929;—CL 1929, 17346;—CL 1948, 769.18.

Former law: See section 4 of Act 184 of 1905, being CL 1915, § 15862.

769.19-769.23 Repealed. 1972, Act 179, Imd. Eff. June 16, 1972.

Compiler's note: The repealed sections pertained to the death penalty.

769.24 Excessive sentence; validity.

Sec. 24. Whenever, in any criminal case, the defendant shall be adjudged guilty and a punishment by fine or imprisonment shall be imposed in excess of that allowed by law, the judgment shall not for that reason alone be judged altogether void, nor be wholly reversed and annulled by any court of review, but the same shall be valid and effectual to the extent of the lawful penalty, and shall only be reversed or annulled on writ of error or otherwise, in respect to the unlawful excess.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17352;—CL 1948, 769.24.

Former law: See Act 170 of 1867, being CL 1871, § 7998; How., § 9614; CL 1897, § 11984; and CL 1915, § 15857.

769.25 Criminal defendant less than 18 years; circumstances; imprisonment for life without possibility of parole; violations; motion; response; hearing; record; sentence.

Sec. 25. (1) This section applies to a criminal defendant who was less than 18 years of age at the time he or she committed an offense described in subsection (2) if either of the following circumstances exists:

(a) The defendant is convicted of the offense on or after the effective date of the amendatory act that added this section.

(b) The defendant was convicted of the offense before the effective date of the amendatory act that added this section and either of the following applies:

(i) The case is still pending in the trial court or the applicable time periods for direct appellate review by state or federal courts have not expired.

(ii) On June 25, 2012 the case was pending in the trial court or the applicable time periods for direct appellate review by state or federal courts had not expired.

(2) The prosecuting attorney may file a motion under this section to sentence a defendant described in subsection (1) to imprisonment for life without the possibility of parole if the individual is or was convicted of any of the following violations:

(a) A violation of section 17764(7) of the public health code, 1978 PA 368, MCL 333.17764.

(b) A violation of section 16(5), 18(7), 316, 436(2)(e), or 543f of the Michigan penal code, 1931 PA 328, MCL 750.16, 750.18, 750.316, 750.436, and 750.543f.

(c) A violation of chapter XXXIII of the Michigan penal code, 1931 PA 328, MCL 750.200 to 750.212a.

(d) Any violation of law involving the death of another person for which parole eligibility is expressly denied under state law.

(3) If the prosecuting attorney intends to seek a sentence of imprisonment for life without the possibility of parole for a case described in subsection (1)(a), the prosecuting attorney shall file the motion within 21 days after the defendant is convicted of that violation. If the prosecuting attorney intends to seek a sentence of imprisonment for life without the possibility of parole for a case described under subsection (1)(b), the prosecuting attorney shall file the motion within 90 days after the effective date of the amendatory act that added this section. The motion shall specify the grounds on which the prosecuting attorney is requesting the court to impose a sentence of imprisonment for life without the possibility of parole.

(4) If the prosecuting attorney does not file a motion under subsection (3) within the time periods provided for in that subsection, the court shall sentence the defendant to a term of years as provided in subsection (9).

(5) If the prosecuting attorney files a motion under subsection (2) requesting that the individual be sentenced to imprisonment for life without parole eligibility, the individual shall file a response to the prosecution's motion within 14 days after receiving notice of the motion.

(6) If the prosecuting attorney files a motion under subsection (2), the court shall conduct a hearing on the motion as part of the sentencing process. At the hearing, the trial court shall consider the factors listed in *Miller v Alabama*, 576 US ____; 183 L Ed 2d 407; 132 S Ct 2455 (2012), and may consider any other criteria relevant to its decision, including the individual's record while incarcerated.

(7) At the hearing under subsection (6), the court shall specify on the record the aggravating and mitigating circumstances considered by the court and the court's reasons supporting the sentence imposed. The court may consider evidence presented at trial together with any evidence presented at the sentencing hearing.

(8) Each victim shall be afforded the right under section 15 of the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.765, to appear before the court and make an oral impact statement at any sentencing or resentencing of the defendant under this section.

(9) If the court decides not to sentence the individual to imprisonment for life without parole eligibility, the court shall sentence the individual to a term of imprisonment for which the maximum term shall be not less than 60 years and the minimum term shall be not less than 25 years or more than 40 years.

(10) A defendant who is sentenced under this section shall be given credit for time already served but shall not receive any good time credits, special good time credits, disciplinary credits, or any other credits that reduce the defendant's minimum or maximum sentence.

History: Add. 2014, Act 22, Imd. Eff. Mar. 4, 2014.

Compiler's note: Former MCL 769.25, which pertained to authorized imprisonment in reformatory at Ionia or Detroit house of correction instead of state prison of any male person convicted for first time of any offense other than rape, murder, or treason, was repealed by Act 256 of 1964, Eff. Aug. 28, 1964.

769.25a Case as final on or before June 24, 2012; effect of state supreme court or United States supreme court decision; procedures; resentencing hearings; priority; credit for time served.

Sec. 25a. (1) Except as otherwise provided in subsections (2) and (3), the procedures set forth in section 25

of this chapter do not apply to any case that is final for purposes of appeal on or before June 24, 2012. A case is final for purposes of appeal under this section if any of the following apply:

(a) The time for filing an appeal in the state court of appeals has expired.

(b) The application for leave to appeal is filed in the state supreme court and is denied or a timely filed motion for rehearing is denied.

(c) If the state supreme court has granted leave to appeal, after the court renders its decision or after a timely filed motion for rehearing is denied.

(2) If the state supreme court or the United States supreme court finds that the decision of the United States supreme court in Miller v Alabama, 576 US ____; 183 L Ed 2d 407; 132 S Ct 2455 (2012), applies retroactively to all defendants who were under the age of 18 at the time of their crimes, and that decision is final for appellate purposes, the determination of whether a sentence of imprisonment for a violation set forth in section 25(2) of this chapter shall be imprisonment for life without parole eligibility or a term of years as set forth in section 25(9) of this chapter shall be made by the sentencing judge or his or her successor as provided in this section. For purposes of this subsection, a decision of the state supreme court is final when either the United States supreme court denies a petition for certiorari challenging the decision or the time for filing that petition passes without a petition being filed.

(3) If the state supreme court or the United States supreme court finds that the decision of the United States supreme court in Miller v Alabama, 576 US ____; 183 L Ed 2d 407; 132 S Ct 2455 (2012), applies retroactively to all defendants who were convicted of felony murder under section 316(1)(b) of the Michigan penal code, 1931 PA 328, MCL 750.316, and who were under the age of 18 at the time of their crimes, and that the decision is final for appellate purposes, the determination of whether a sentence of imprisonment shall be imprisonment for life without parole eligibility or a term of years as set forth in section 25(9) of this chapter shall be made by the sentencing judge or his or her successor as provided in this section. For purposes of this subsection, a decision of the state supreme court is final when either the United States supreme court denies a petition for certiorari challenging the decision with regard to the retroactive application of Miller v Alabama, 576 US ____; 183 L Ed 2d 407; 132 S Ct 2455 (2012), to defendants who committed felony murder and who were under the age of 18 at the time of their crimes, or when the time for filing that petition passes without a petition being filed.

(4) The following procedures apply to cases described in subsections (2) and (3):

(a) Within 30 days after the date the supreme court's decision becomes final, the prosecuting attorney shall provide a list of names to the chief circuit judge of that county of all defendants who are subject to the jurisdiction of that court and who must be resentenced under that decision.

(b) Within 180 days after the date the supreme court's decision becomes final, the prosecuting attorney shall file motions for resentencing in all cases in which the prosecuting attorney will be requesting the court to impose a sentence of imprisonment for life without the possibility of parole. A hearing on the motion shall be conducted as provided in section 25 of this chapter.

(c) If the prosecuting attorney does not file a motion under subdivision (b), the court shall sentence the individual to a term of imprisonment for which the maximum term shall be 60 years and the minimum term shall be not less than 25 years or more than 40 years. Each victim shall be afforded the right under section 15 of the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.765, to appear before the court and make an oral impact statement at any resentencing of the defendant under this subdivision.

(5) Resentencing hearings under subsection (4) shall be held in the following order of priority:

(a) Cases involving defendants who have served 20 or more years of imprisonment shall be held first.

(b) Cases in which the prosecuting attorney has filed a motion requesting a sentence of imprisonment for life without the possibility of parole shall be held after cases described in subdivision (a) are held.

(c) Cases other than those described in subdivisions (a) and (b) shall be held after the cases described in subdivisions (a) and (b) are held.

(6) A defendant who is resentenced under subsection (4) shall be given credit for time already served, but shall not receive any good time credits, special good time credits, disciplinary credits, or any other credits that reduce the defendant's minimum or maximum sentence.

History: Add. 2014, Act 22, Imd. Eff. Mar. 4, 2014.

769.26 Error in pleading or procedure; effect.

Sec. 26. No judgment or verdict shall be set aside or reversed or a new trial be granted by any court of this state in any criminal case, on the ground of misdirection of the jury, or the improper admission or rejection of evidence, or for error as to any matter of pleading or procedure, unless in the opinion of the court, after an examination of the entire cause, it shall affirmatively appear that the error complained of has resulted in a miscarriage of justice.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17354;—CL 1948, 769.26.

Former law: See Act 89 of 1915, being CL 1915, § 14565.

769.27 Change of sentence by court; notice to prosecuting attorney, defendant, and defendant's counsel; objection; hearing.

Sec. 27. If the court changes any sentence imposed under this act in any respect, the clerk of the court shall give written notice of the change to the prosecuting attorney, the defendant, and the defendant's counsel. The prosecuting attorney, the defendant's counsel, or the defendant may file an objection to the change. The court shall promptly hold a hearing on any objection filed.

History: Add. 1935, Act 144, Eff. Sept. 21, 1935;—CL 1948, 769.27;—Am. 2000, Act 220, Eff. Oct. 1, 2000.

769.28 Commitment or sentence for maximum of 1 year; place; section inapplicable to certain juveniles.

Sec. 28. Notwithstanding any provision of law to the contrary, if a person convicted of a crime or contempt of court is committed or sentenced to imprisonment for a maximum of 1 year or less, the commitment or sentence shall be to the county jail of the county in which the person was convicted and not to a state penal institution. This section does not apply to a juvenile placed on probation and committed to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309, under section 1(3) or (4) of this chapter.

History: Add. 1953, Act 119, Imd. Eff. May 25, 1953;—Am. 1954, Act 32, Imd. Eff. Mar. 31, 1954;—Am. 1955, Act 202, Imd. Eff. June 17, 1955;—Am. 1985, Act 47, Imd. Eff. June 14, 1985;—Am. 1988, Act 78, Eff. Oct. 1, 1988;—Am. 1998, Act 520, Imd. Eff. Jan. 12, 1999.

Compiler's note: Section 3 of Act 78 of 1988 provides: "This amendatory act shall take effect June 1, 1988." This section was amended by Act 181 of 1988 to read as follows: "This amendatory act shall take effect October 1, 1988."

769.31 Definitions.

Sec. 31. As used in this section and section 34 of this chapter:

(a) "Departure" means a sentence imposed that is not within the appropriate minimum sentence range established under the sentencing guidelines set forth in chapter XVII.

(b) "Intermediate sanction" means probation or any sanction, other than imprisonment in a state prison or state reformatory, that may lawfully be imposed. Intermediate sanction includes, but is not limited to, 1 or more of the following:

(i) Inpatient or outpatient drug treatment or participation in a drug treatment court under chapter 10A of the revised judicature act of 1961, 1961 PA 236, MCL 600.1060 to 600.1082.

(ii) Probation with any probation conditions required or authorized by law.

(iii) Residential probation.

(iv) Probation with jail.

(v) Probation with special alternative incarceration.

(vi) Mental health treatment.

(vii) Mental health or substance abuse counseling.

(viii) Jail.

(ix) Jail with work or school release.

(x) Jail, with or without authorization for day parole under 1962 PA 60, MCL 801.251 to 801.258.

(xi) Participation in a community corrections program.

(xii) Community service.

(xiii) Payment of a fine.

(xiv) House arrest.

(xv) Electronic monitoring.

(c) "Offender characteristics" means only the prior criminal record of an offender.

(d) "Offense characteristics" means the elements of the crime and the aggravating and mitigating factors relating to the offense that the legislature determines are appropriate. For purposes of this subdivision, an offense described in section 33b of the corrections code of 1953, 1953 PA 232, MCL 791.233b, that resulted in a conviction and that arose out of the same transaction as the offense for which the sentencing guidelines are being scored shall be considered as an aggravating factor.

(e) "Prior criminal record" means all of the following:

(i) Misdemeanor and felony convictions.

(ii) Probation and parole violations involving criminal activity.

(iii) Dispositions entered under section 18 of chapter XIII of 1939 PA 288, MCL 712A.18, for acts that

would have been crimes if committed by an adult.

(iv) Assignment to youthful trainee status under sections 11 to 15 of chapter II.

(v) A conviction set aside under 1965 PA 213, MCL 780.621 to 780.624.

(vi) Dispositions described in subparagraph (iii) that have been set aside under section 18e of chapter XIII of 1939 PA 288, MCL 712A.18e, or expunged.

History: Add. 1994, Act 445, Imd. Eff. Jan. 10, 1995;—Am. 1998, Act 317, Eff. Dec. 15, 1998;—Am. 2002, Act 31, Eff. Apr. 1, 2002;—Am. 2004, Act 220, Eff. Jan. 1, 2005.

769.32, 769.33 Repealed. 2002, Act 31, Eff. Apr. 1, 2002.

Compiler's note: The repealed sections pertained to creation and duties of the sentencing commission.

***** 769.32a THIS SECTION IS REPEALED BY ACT 465 OF 2014 EFFECTIVE JANUARY 12, 2019

769.32a Criminal justice policy commission; creation; appointment; membership; chairperson; terms; vacancy; salary; expenses; subcommittees; conduct of business at public meetings; quorum; writing available to public; office space, staff, and equipment.

Sec. 32a. (1) A criminal justice policy commission is created in the legislative council. Before March 1, 2015, the governor shall appoint the commission members described in subdivisions (d) to (o). The commission consists of all of the following members:

(a) Two individuals who are members of the senate submitted by the senate majority leader, 1 individual from each caucus.

(b) Two individuals who are members of the house of representatives submitted by the speaker of the house of representatives, 1 individual from each caucus.

(c) The attorney general, or his or her designee.

(d) One individual who is a circuit court judge, appointed from a list of 3 names submitted by the Michigan judges association.

(e) One individual who is a district court judge, appointed from a list of 3 names submitted by the Michigan district judges association.

(f) One individual who represents the prosecuting attorneys of this state, appointed from a list of 3 names submitted by the prosecuting attorneys association of Michigan.

(g) One individual who represents criminal defense attorneys, appointed from a list of 3 names submitted by the criminal defense attorneys of Michigan.

(h) One individual appointed from a list of 3 names submitted by the Michigan sheriff's association.

(i) One individual appointed from a list of 3 names submitted by the director of the Michigan department of corrections.

(j) One individual who represents advocates of alternatives to incarceration.

(k) One individual who works in the mental or behavioral health care field.

(l) One individual appointed from a list of 3 names submitted by the Michigan association of counties.

(m) One individual who represents Michigan association of community corrections advisory boards.

(n) One individual appointed from a list of 3 names submitted by the Michigan coalition to end domestic and sexual violence.

(o) One member of the public who is neither affiliated with nor employed by a department, office, or entity described in this subsection, by the commission created under this subsection, or by any entity employed or hired by the commission created under this subsection.

(2) The member of the public appointed by the governor under subsection (1)(o) shall serve as the chairperson of the criminal justice policy commission.

(3) Except as otherwise provided in this subsection, the commission members shall be appointed for terms of 4 years. Of the members first appointed under subsection (1)(d) to (o), 4 members shall serve for 2 years, 4 members shall serve for 3 years, and 4 members shall serve for 4 years. The members of the commission appointed under subsection (1)(a) and (b) shall be appointed for terms of 2 years.

(4) A vacancy on the commission caused by the expiration of a term or a resignation or death shall be filled in the same manner as the original appointment. A member appointed to fill a vacancy caused by a resignation or death shall be appointed for the balance of the unexpired term.

(5) A commission member shall not receive a salary for being a commission member but shall be reimbursed for his or her reasonable, actual, and necessary expenses incurred in the performance of his or her duties as a commission member.

(6) The commission may establish subcommittees that may consist of individuals who are not members of

the commission, including, but not limited to, experts in matters of interest to the commission.

(7) The commission's business shall be conducted at public meetings held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(8) A quorum consists of a majority of the members of the sentencing commission. All commission business shall be conducted by not less than a quorum. A vote of the majority of the members of the commission present and serving is required for the official action of the commission.

(9) A writing prepared, owned, used, in the possession of, or retained by the commission in the performance of an official function shall be made available to the public in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(10) The legislative council shall provide the commission with suitable office space, staff, and necessary equipment.

History: Add. 2014, Act 465, Imd. Eff. Jan. 12, 2015.

***** 769.33a THIS SECTION IS REPEALED BY ACT 465 OF 2014 EFFECTIVE JANUARY 12, 2019

769.33a Criminal justice policy commission; duties; prison and jail impact report; recommended intermediate sanctions; recommended modifications to law, administrative rule, policy, or sentencing guidelines; repeal of section and MCL 769.32a.

Sec. 33a. (1) The criminal justice policy commission shall do all of the following:

(a) Collect, prepare, analyze, and disseminate information regarding state and local sentencing and proposed release policies and practices for felonies and the use of prisons and jails.

(b) Collect and analyze information concerning how misdemeanor sentences and the detention of defendants pending trial affect local jails.

(c) Conduct ongoing research regarding the effectiveness of the sentencing guidelines in achieving the purposes set forth in subdivision (f).

(d) In cooperation with the department of corrections, collect, analyze, and compile data and make projections regarding the populations and capacities of state and local correctional facilities, the impact of the sentencing guidelines and other laws, rules, and policies on those populations and capacities, and the effectiveness of efforts to reduce recidivism. Measurement of recidivism shall include, as applicable, analysis of all of the following:

(i) Rearrest rates, resentence rates, and return to prison rates.

(ii) One-, 2-, and 3-year intervals after exiting prison or jail and after entering probation.

(iii) The statewide level, and by locality and discrete program, to the extent practicable.

(e) In cooperation with the state court administrator, collect, analyze, and compile data regarding the effect of sentencing guidelines on the caseload, docket flow, and case backlog of the trial and appellate courts of this state.

(f) Develop modifications to the sentencing guidelines for recommendation to the legislature. Any modifications to the sentencing guidelines shall accomplish all of the following:

(i) Provide for the protection of the public.

(ii) Consider offenses involving violence against a person or serious and substantial pecuniary loss as more severe than other offenses.

(iii) Be proportionate to the seriousness of the offense and the offender's prior criminal record.

(iv) Reduce sentencing disparities based on factors other than offense characteristics and offender characteristics and ensure that offenders with similar offense and offender characteristics receive substantially similar sentences.

(v) Specify the circumstances under which a term of imprisonment is proper and the circumstances under which intermediate sanctions are proper.

(vi) Establish sentence ranges for imprisonment that are within the minimum and maximum sentences allowed by law for the offenses to which the ranges apply.

(vii) Maintain separate sentence ranges for convictions under the habitual offender provisions in sections 10, 11, 12, and 13 of this chapter, which may include as an aggravating factor, among other relevant considerations, that the accused has engaged in a pattern of proven or admitted criminal behavior.

(viii) Establish sentence ranges that the commission considers appropriate.

(ix) Recognize the availability of beds in the local corrections system and that the local corrections system is an equal partner in corrections policy, and preserve its funding mechanisms.

(g) Consider the suitability and impact of offense variable scoring with regard to physical and psychological injury to victims and victims' families.

(2) In developing proposed modifications to the sentencing guidelines, the commission shall submit to the legislature a prison and jail impact report relating to any modifications to the sentencing guidelines. The report shall include the projected impact on total capacity of state and local correctional facilities.

(3) Proposed modifications to sentencing guidelines shall include recommended intermediate sanctions for each case in which the upper limit of the recommended minimum sentence range is 18 months or less.

(4) The commission may recommend modifications for submission to the legislature to any law, administrative rule, or policy that affects sentencing or the use and length of incarceration. The recommendations shall reflect all of the following policies:

(a) To render sentences in all cases within a range of severity proportionate to the gravity of offenses, the harms done to crime victims, and the blameworthiness of offenders.

(b) When reasonably feasible, to achieve offender rehabilitation, general deterrence, incapacitation of dangerous offenders, restoration of crime victims and communities, and reintegration of offenders into the law-abiding community.

(c) To render sentences no more severe than necessary to achieve the applicable purposes in subdivisions (a) and (b).

(d) To preserve judicial discretion to individualize sentences within a framework of law.

(e) To produce sentences that are uniform in their reasoned pursuit of the objectives described in subsection (1).

(f) To eliminate inequities in sentencing and length of incarceration across population groups.

(g) To encourage the use of intermediate sanctions.

(h) To ensure that adequate resources are available for carrying out sentences imposed and that rational priorities are established for the use of those resources.

(i) To promote research on sentencing policy and practices, including assessments of the effectiveness of criminal sanctions as measured against their purposes.

(j) To increase the transparency of the sentencing and corrections system, its accountability to the public, and the legitimacy of its operations.

(5) The commission shall submit any recommended modifications to the sentencing guidelines or to other laws, administrative rules, or policies to the senate majority leader, the speaker of the house of representatives, and the governor.

(6) This section and section 32a of this chapter are repealed 4 years after the effective date of the amendatory act that added this section.

History: Add. 2014, Act 465, Imd. Eff. Jan. 12, 2015.

769.34 Sentencing guidelines; duties of court.

Sec. 34. (1) The sentencing guidelines promulgated by order of the Michigan supreme court do not apply to felonies enumerated in part 2 of chapter XVII committed on or after January 1, 1999.

(2) Except as otherwise provided in this subsection or for a departure from the appropriate minimum sentence range provided for under subsection (3), the minimum sentence imposed by a court of this state for a felony enumerated in part 2 of chapter XVII committed on or after January 1, 1999 shall be within the appropriate sentence range under the version of those sentencing guidelines in effect on the date the crime was committed. Both of the following apply to minimum sentences under this subsection:

(a) If a statute mandates a minimum sentence for an individual sentenced to the jurisdiction of the department of corrections, the court shall impose sentence in accordance with that statute. Imposing a mandatory minimum sentence is not a departure under this section. If a statute mandates a minimum sentence for an individual sentenced to the jurisdiction of the department of corrections and the statute authorizes the sentencing judge to depart from that minimum sentence, imposing a sentence that exceeds the recommended sentence range but is less than the mandatory minimum sentence is not a departure under this section. If the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, mandates a minimum sentence for an individual sentenced to the jurisdiction of the department of corrections and the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, authorizes the sentencing judge to impose a sentence that is less than that minimum sentence, imposing a sentence that exceeds the recommended sentence range but is less than the mandatory minimum sentence is not a departure under this section.

(b) The court shall not impose a minimum sentence, including a departure, that exceeds 2/3 of the statutory maximum sentence.

(3) A court may depart from the appropriate sentence range established under the sentencing guidelines set forth in chapter XVII if the court has a substantial and compelling reason for that departure and states on the record the reasons for departure. All of the following apply to a departure:

(a) The court shall not use an individual's gender, race, ethnicity, alienage, national origin, legal

occupation, lack of employment, representation by appointed legal counsel, representation by retained legal counsel, appearance in propria persona, or religion to depart from the appropriate sentence range.

(b) The court shall not base a departure on an offense characteristic or offender characteristic already taken into account in determining the appropriate sentence range unless the court finds from the facts contained in the court record, including the presentence investigation report, that the characteristic has been given inadequate or disproportionate weight.

(4) Intermediate sanctions shall be imposed under this chapter as follows:

(a) If the upper limit of the recommended minimum sentence range for a defendant determined under the sentencing guidelines set forth in chapter XVII is 18 months or less, the court shall impose an intermediate sanction unless the court states on the record a substantial and compelling reason to sentence the individual to the jurisdiction of the department of corrections. An intermediate sanction may include a jail term that does not exceed the upper limit of the recommended minimum sentence range or 12 months, whichever is less.

(b) If an attempt to commit a felony designated in offense class H in part 2 of chapter XVII is punishable by imprisonment for more than 1 year, the court shall impose an intermediate sanction upon conviction of that offense absent a departure.

(c) If the upper limit of the recommended minimum sentence exceeds 18 months and the lower limit of the recommended minimum sentence is 12 months or less, the court shall sentence the offender as follows absent a departure:

(i) To imprisonment with a minimum term within that range.

(ii) To an intermediate sanction that may include a term of imprisonment of not more than 12 months.

(5) If a crime has a mandatory determinate penalty or a mandatory penalty of life imprisonment, the court shall impose that penalty. This section does not apply to sentencing for that crime.

(6) As part of the sentence, the court may also order the defendant to pay any combination of a fine, costs, or applicable assessments. The court shall order payment of restitution as provided by law.

(7) If the trial court imposes on a defendant a minimum sentence that is longer or more severe than the appropriate sentence range, as part of the court's advice of the defendant's rights concerning appeal, the court shall advise the defendant orally and in writing that he or she may appeal the sentence as provided by law on grounds that it is longer or more severe than the appropriate sentence range.

(8) All of the following shall be part of the record filed for an appeal of a sentence under this section:

(a) An entire record of the sentencing proceedings.

(b) The presentence investigation report. Any portion of the presentence investigation report exempt from disclosure by law shall not be a public record.

(c) Any other reports or documents the sentencing court used in imposing sentence.

(9) An appeal of a sentence under this section does not stay execution of the sentence.

(10) If a minimum sentence is within the appropriate guidelines sentence range, the court of appeals shall affirm that sentence and shall not remand for resentencing absent an error in scoring the sentencing guidelines or inaccurate information relied upon in determining the defendant's sentence. A party shall not raise on appeal an issue challenging the scoring of the sentencing guidelines or challenging the accuracy of information relied upon in determining a sentence that is within the appropriate guidelines sentence range unless the party has raised the issue at sentencing, in a proper motion for resentencing, or in a proper motion to remand filed in the court of appeals.

(11) If, upon a review of the record, the court of appeals finds the trial court did not have a substantial and compelling reason for departing from the appropriate sentence range, the court shall remand the matter to the sentencing judge or another trial court judge for resentencing under this chapter.

(12) Time served on the sentence appealed under this section is considered time served on any sentence imposed after remand.

History: Add. 1994, Act 445, Eff. Dec. 15, 1998;—Am. 1998, Act 317, Eff. Dec. 15, 1998;—Am. 1999, Act 227, Imd. Eff. Dec. 28, 1999;—Am. 2000, Act 279, Eff. Oct. 1, 2000;—Am. 2002, Act 666, Eff. Mar. 1, 2003.

769.35 Jail reimbursement program; operation; criteria.

Sec. 35. The department of corrections shall operate a jail reimbursement program that provides funding to counties for housing offenders in county jails who otherwise would have been sentenced to prison. The criteria for reimbursement, including but not limited to criteria for determining those offenders who otherwise would have been sentenced to prison, and the rate of reimbursement shall be established in the annual appropriations acts for the department of corrections.

History: Add. 1998, Act 317, Eff. Dec. 15, 1998.

769.36 Deaths arising out of same criminal transaction; crimes to which person may be

charged and convicted; consecutive terms; definitions.

Sec. 36. (1) A person may be charged with and convicted of any of the following for each death arising out of the same criminal transaction, and the court may order the terms of imprisonment to be served consecutively to each other:

(a) Section 602a(5), 617(3), 625(4), or 904(4) of the Michigan vehicle code, 1949 PA 300, MCL 257.602a, 257.617, 257.625, and 257.904.

(b) Section 317 or 321 of the Michigan penal code, 1931 PA 328, MCL 750.317 and 750.321, where death results from the operation of a vehicle, vessel, ORV, snowmobile, aircraft, or locomotive, or section 479a(5) of the Michigan penal code, 1931 PA 328, MCL 750.479a.

(c) Section 80176(4), 81134(7), or 82127(4) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.80176, 324.81134, and 324.82127.

(d) Section 185(4) of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.185.

(e) Section 353(6) of the railroad code of 1993, 1993 PA 354, MCL 462.353.

(2) As used in this section:

(a) "Aircraft" means that term as defined in section 2 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.2.

(b) "ORV" means that term as defined in section 81101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.81101.

(c) "Snowmobile" means that term as defined in section 82101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.82101.

(d) "Vehicle" means that term as defined in section 79 of the Michigan vehicle code, 1949 PA 300, MCL 257.79.

(e) "Vessel" means that term as defined in section 80104 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.80104.

History: Add. 2001, Act 246, Eff. Mar. 1, 2002;—Am. 2002, Act 659, Eff. Apr. 1, 2003.